Circuit Court of the United States

Oct. ~~Nov~~ Term 1869 Dist. of Mass.

William ~~Beach~~ Lawrence in Equity

vs

Richard H. Dana Jr. and others

Decree

This cause came on to be heard on the bill, answers, ~~and~~ replications, and proofs, and was argued by counsel and ~~considered by the Court~~ thereupon, upon consideration thereof the Court doth find and doth declare ~~and decree~~ adjudge and decree —

~~having examined the whole case with care, is of the opinion~~ that many of the notes presented in the edition edited by the respondent, ~~whose case is under consideration~~, do infringe the corresponding notes in the two editions edited and annotated by the complainant, and that the respondent borrowed very largely the arrangement of the antecedent edition, as well as the mode in which the notes in that edition are combined and connected with the text. ~~Judge Story held in the case of Emerson v.~~

And the Court doth order adjudge and decree:

1. That the complainant in a Court of Equity is the equitable owner of the notes in the two annotated editions described in the pleadings as therein arranged, and the mode in which they are combined and connected with the text.

2. That the title to the entire text, together with the title to the memoir and indices, is in the proprietor of the book, and not in the complainant as alleged in the bill of complaint.

3. That there are notes in the edition edited by the respondent of substantial importance in point of number and the value of the materials which do infringe the equitable rights of the complainant, as explained and defined by the Court

4. That all the respondents had notice of the claim of the complainant, as explained and defined by the Court.

5. That there are notes in that edition of substantial importance in point of number and the value of the materials which do not infringe any rights of the complainant.

6. That the notes in that edition consisting wholly of citations found in the corresponding notes of the complainant do infringe his rights, as explained and defined by the Court, though many of them are unaccompanied by the extracts collected and presented in the next preceding edition.

7. That notes consisting of authorities or collections of authorities copied in like manner as described in the preceding proposition, and without remarks or comments, do also infringe the complainant's rights, though they are found inserted in, or prefixed or appended to, notes otherwise not objectionable.

8. That notes of which the whole or some substantial and material part is condensed from the corresponding notes in the preceding edition, or from the extracts therein printed and published, without any marks of original labor, or of any such labor except the study of the note copied and adopted, do also infringe the complainant's rights, as explained and defined.

9. That notes wholly original do not infringe.

10. That notes partly original and partly copied from the preceding edition do not infringe, except for the matter copied, if it be practicable to ascertain and define the separate proportions and make the separation of the same; but if not, still the respondent, at the proper stage of the case, must be restrained from using the part copied.

examine the pleadings & proofs

11. That the cause ~~must~~ be referred to a master to ascertain and report the extent of the infringement as adjudged by the Court in this investigation, and also to examine and ascertain what, if any, other instances of the alleged infringements within the principles here explained are proved; and if any, to classify the same, and report the details, together with the reasons for his conclusions, for the consideration of the Court.

12. That all other matters in the cause ~~will be~~ reserved until the coming in of the master's report.

13. That the cause is referred to Henry W. Paine Esquire as master, for his examination and report in the premises, in conformity to ~~the opinion and direction of the Court~~.

be and the same is

(this decree and the Opinion of the Court filed in this cause

by the Court-

John G. Nelson

Clerk.

November 27. 1869.

Draft reversed
by Judge Clifford

J. J. STORROW,
43 STATE STREET, BOSTON.

July 30. 79

Mr. Stetson

Please send me my objections or exceptions to Masters Report in Lawrence vs. Dana.

Yours truly
J. J. Storrow

Filed & in July 79 Volume . . . .

Debt to J. J. Storrow Esq.
Defts Objections that Masters Report is not properly filed and Defts Exceptions to Masters Report — July 31, 1879

Lawrence
v.
Dana Jr et al

Receipt

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(original)

Circuit Court of the United States.

DISTRICT OF MASSACHUSETTS, SS.

WILLIAM B. LAWRENCE

vs.

Richard Henry Dana Jr.
~~CHARLES C. LITTLE~~ ET ALS.

BILL IN EQUITY.

To the Honorable the Judges of the Circuit Court of the United States for the District of Massachusetts:

WILLIAM BEACH LAWRENCE, a resident of Newport, in the State of Rhode Island, and a citizen of said State, brings this his bill of complaint against Charles C. Little of Cambridge, Augustus Flagg of Boston, John Bartlett of Cambridge, and Henry T. Miles of Boston, booksellers and publishers, copartners, doing business at said Boston, under the style and firm of Little, Brown & Company, and Richard Henry Dana, jr., Esquire, and Miss Martha B. Wheaton, both of said Cambridge, all in the District of Massachusetts, and all citizens of the State of Massachusetts.

and Henry Dana jr. of Cambridge Doctor of Laws

both in their own right and as administrators and representatives of Catherine Wheaton late deceased

Thereupon your orator complains and shows unto your Honors, that the late Henry Wheaton wrote and composed a book or treatise which

he published in Philadelphia and in London, in the year 1836, entitled as follows:

"Elements of International Law, with a sketch of the History of the Science, by Henry Wheaton, LL.D., Resident Minister of the United States of America to the Court of Berlin, Member of the American Philosophical Society of Philadelphia, of the Royal Asiatic Society of London, and of the Scandinavian Literary Society of Copenhagen. Philadelphia. Cary, Lea & Blanchard, 1836," with the necessary variation for the title of the London edition.

That in the year 1846 the said Henry Wheaton published in Philadelphia a third edition of the same work, entitled:

"Elements of International Law, by Henry Wheaton, LL.D., Minister of the United States at the Court of Prussia, Corresponding Member of the Academy of Moral and Political Sciences in the Institute of France, Honorary Member of the Royal Academy of Sciences at Berlin. Third edition, revised and corrected. Philadelphia, Lea & Blanchard, 1846."

That in 1848 the said Wheaton published a fourth edition of the same book, in the French language, at Leipzig, in two volumes, entitled:

"Elements du Droit International, par Henry Wheaton, ex-ministre des états-unis d'Amérique près la Cour de Prusse, Membre Honoraire de l'Académie Royale des Sciences de Berlin, Membre Correspondant de l'Académie des Sciences Morales et Politiques dans l'Institut de France. Troisième Edition. Leipzig, F. A. Brockhaüs, 1848."

That in said edition of 1848 said Wheaton inserted and published, both in the text and notes, many new matters not at any time published or written by him in the English language.

That said French edition was reprinted by said Brockhaüs in 1853.

That said Henry Wheaton died in 1848.

That in 1853 the edition published in Philadelphia in 1846 had not been entirely sold.

That in that year Mrs. Catherine Wheaton, late deceased, the widow of said Henry Wheaton, requested your orator to prepare a new edition of said book, and to make such annotations and such additions to it as should increase its value and render it more salable in the market, and among other annotations to add a full and careful memoir of the author.

That a great friendship had existed between your orator and said Henry Wheaton since the year 1823; that they had cultivated the study

of International Law together; that your orator had been conversant with all said Wheaton's labors in the preparation of said book, and had been entrusted by said Wheaton with his manuscripts, and had superintended the publication of the edition of 1846, and that he was desirous that said book should be more widely known, and that said Mrs. Wheaton should receive some pecuniary benefit from the publication thereof.

Whereupon in pursuance of said request, your orator prepared such notes as seemed to him fit, said annotations being in the form of foot-notes and addenda to them, and an appendix and introductory remarks containing a full and careful memoir of the life of said Henry Wheaton.

And your orator shows that said edition, so prepared by your orator, was entitled as follows:

"Elements of International Law by Henry Wheaton, LL.D., Minister of the United States at the Court of Prussia, Corresponding Member of the Academy of Moral and Political Sciences in the Institute of France, Honorary Member of the Royal Academy of Sciences at Berlin, etc. etc. Sixth edition, with the last corrections of the author, additional notes, and introductory remarks, containing a notice of Mr. Wheaton's diplomatic career and of the antecedents of his life, by William Beach Lawrence, formerly Charge d'Affaires of the United States at London. Boston, Little, Brown & Company, 1855."

And that so far as it contained matters not published in the previous editions of said Wheaton's Elements, published in Philadelphia, as aforesaid, it was duly copyrighted according to law by the said Catherine Wheaton as proprietor thereof, she acting in the premises with the knowledge and by the consent and request of your orator as hereinafter set forth, and that it was published by the said firm of Little, Brown & Co., and that upwards of two thousand copies were sold in this country and many more in England, all the proceeds and profits whereof arising out of the contract with the said publishers, respecting the publication thereof, were enjoyed by the said Catherine Wheaton, in pursuance of the purpose and intention with which your orator undertook to prepare said edition.

And afterwards, in pursuance of other similar requests of said Catherine Wheaton your orator prepared other annotations, all of which were copyrighted as aforesaid, by said Mrs. Wheaton, and published by said Little, Brown & Co., in 1863, in a book entitled as follows:

"Lawrence's Wheaton. Elements of International Law. By Henry Wheaton, LL.D., Minister of the United States at the Court of Prussia; Corresponding Member of the Academy of Moral and Political Sciences, in the Institute of France; Honorary member of the Royal Academy of Sciences at Berlin, etc., etc. Second Annotated Edition. By William Beach Lawrence, author of Visitation and Search; etc., etc. Boston, Little, Brown and Company. London, Sampson, Low, Son and Company, 1863."

Your orator further shows that he is advised and believes that the transactions aforesaid between your orator and the said Mrs. Wheaton, with reference to the editing of said two annotated editions, the more especially as your orator received no consideration for his services, operated to convey to the said Mrs. Wheaton no other or further beneficial interest in said annotations and additions than a right to use the same in the said two annotated editions.

And your orator shows that in fact it was always understood and agreed by and between your orator and said Mrs. Wheaton that the beneficial interest in all the matter due to your orator's labor and skill was as aforesaid, and that the copyrights taken out by said Mrs. Wheaton were taken out by agreement with your orator, and were held by her in trust as aforesaid, and not otherwise.

And your orator shows that said agreements and understanding and your orator's rights in the premises were well known to the respondents, and that they had notice of the same. before the matters hereinafter set forth were done and transacted

Your orator further shows that in the year 1860 he ascertained that said Brockhaüs at Leipsic had published another edition in French, being a copy of the edition of Wheaton's Elements, published in 1848, without the knowledge or consent of the representatives of said Wheaton, as he had no right to do, no copyright for the same existing on the continent of Europe. That the said Brockhaüs had never paid any sum of money whatever for the editions so published by him, except two thousand francs paid to Mr. Wheaton in respect of the edition of 1848, and that he contemplated publishing further editions as might suit his convenience or profit, without making any payment therefor of the nature of copyright money. That various negotiations took place between said Brockhaüs and your orator, your orator being requested and authorized to act on behalf of said Mrs. Wheaton, so far as her

interests were concerned. That at the outset of said negotiations, your orator had declared to said Brockhaüs that it was your ôrator's desire that Mrs. Wheaton should receive all compensation which might be paid by said Brockhaüs and might be due to your orator's labors.

That the result of said negotiations was, that in the year 1863 your orator and the said Wheatons promised and agreed with said Brockhaüs substantially as follows:

That your orator should translate into French his annotations, then lately published in the second annotated edition, and should revise them so as in his opinion to adapt them for a work to be sold in Europe making such additions as should make them as complete as possible down to the time of publication, and that said Wheatons should give up all pretence of claim, honorary or otherwise, which they could have on him in respect of the previous editions published by him, and of certain future editions.

Thereupon said Brockhaüs agreed that he would pay to Mrs. Wheaton, if your orator should so direct, the sum of six thousand francs, and would also pay to your orator the sum of $450, for the purpose of defraying in part the expense of the assistance your orator might require in preparing said translation.

And your orator avers that the motive and object of said Brockhaüs in entering into said agreement, and agreeing to pay said money, were the promises and assurances as to the furnishing of said new matter of your orator, and the time and manner in which it should be furnished him, to the end that he might copyright the same or otherwise secure to himself advantages over other publishers, and that said object of said Brockhaüs was well known to and understood by said Wheatons and said Little, and your orator believes by said other respondents.

And your orator further shows that during said negotiations with Brockhaüs, and before any agreement had been made with him, it being well known to your orator and to said Wheatons and said Little that said Brockhaüs would pay said 6,000 francs whenever your orator should direct him so to do, and should undertake and promise as above stated, and would not pay the same unless your orator should so direct and promise, the said Wheatons urged your orator so to do.

That thereupon your orator declared to said Wheatons that by reason of various matters well known to the said Wheatons and the said Little,

your orator would do no more work on any book over which he did not possess exclusive control; that he would undertake the work required to be performed by him, as above, only on the condition that the entire copyright of said Wheaton's Elements, then standing in the name of Mrs. Wheaton as above stated, and also all honorary title thereto in Europe should be assigned to your orator; that the said Wheatons declared that they were ready substantially to assent to this proposal; but Mrs. Wheaton manifested a great desire to retain the legal title to the copyright of said book, it being the only book of her husband of which she held the copyright; that your orator was thereupon requested by said Wheatons to confer with the Hon. T. Parsons, who was authorized to represent said Wheatons, for the purpose of making some arrangement which should substantially secure to your orator all that he desired as above, and should also be agreeable to the feelings of Mrs. Wheaton in the above respect, and that your orator assented thereto solely from a desire to gratify the said feelings of Mrs. Wheaton.

That thereupon your orator had one or more interviews with Mr. Parsons, and the said Parsons and your orator devised a plan, which your orator believed to be proper and sufficient in view of the situation of the parties, and the nature and condition of the subject matter, to practically secure and give to your orator the complete and exclusive control of all future editions of "Wheaton's Elements," and that your orator assented to and accepted the agreement hereinafter set forth in the premises, upon that belief and understanding.

That thereupon your orator had one or more interviews with Mr. Parsons, and made an agreement with him as to the title to the copyright and other matters.

That thereupon Mr. Parsons wrote a memorandum as follows:

"MEMORANDUM.

"Mr. Lawrence will write to Mr. Brockhaüs in terms to bring to Mrs. Wheaton the right to draw on Mr. Brockhaüs at once for 6000 francs. He will also endeavor to get from Mr. Brockhaüs as much as he can towards the actual expense of having the translation into French made here. And so much of that expense as he fails to get from Brockhaüs, Mrs. Wheaton will pay from the proceeds of the draft on Brockhaüs.

"Mrs. Wheaton will, on the payment of her draft on Brockhaüs, agree formally to make no use of Mr. Lawrence's notes in a new edition without his written consent, and Mrs. Wheaton will give to Mr. Lawrence the right to make any use he wishes to of his own notes."

That for the purpose of being the more certain that the memorandum was satisfactory to the said Wheatons, the said Parsons wrote as follows, upon the same sheet of paper:

"Dear Miss Wheaton:

"Mr. Lawrence and I have come to a perfectly amicable result which is expressed generally in this memorandum.

"I will give you my reasons, if they do not occur to you, when we meet.

"If this result be satisfactory, please make a copy for yourself of the memorandum.

"Very sincerely yours,

"THEOPHILUS PARSONS.

"If convenient, take a copy also of Mr. Lawrence's letter to Mr. Brockhaüs, which seems to be entirely satisfactory."

That afterwards, the said Miss Wheaton, on behalf of her mother and herself, and to signify their approval, signed the said memorandum, and wrote the date, "June 14, 1863," thereon, and caused the same to be delivered to your orator.

That subsequently, the agreement so concluded between your orator and said Parsons was varied, or added to in some respects as appears by the letters, copies of which are hereto annexed, but your orator is advised and believes that said new or amended agreement was not intended to vary and does not vary such parts of said first agreement as relate to the copyright in this country, but for greater certainty he craves leave to make proof of the same. That thereupon, your orator wrote to said Brockhaüs as agreed; that said letter was approved by said Parsons and Wheatons, and by them sent to said Brockhaüs, and that on or about the 17th of June, 1863, said Mrs. Wheaton did draw on said Brockhaüs a bill of exchange for the sum of 6000

franes, whieh bill, in eonsequenee of said letter and said promises and undertakings of your orator, and said Wheatons, was duly honored and paid, amounting to the sum of about $1,800.

And your orator shows, that no notiee or statement that the said treatise of said Wheaton had been duly entered aecording to aet of Congress, had been inserted in the eopies of the said editions of 1855 and of 1863 of said treatise, as required of aet of Congress of the year 1831, chap. 16, § 5, exeept a notiee that said editions had been duly entered aecording to aet of Congress by said Catherine Wheaton, in the year 1855, and in the year 1863, as hereinbefore stated. By reason whereof, and of other acts and omissions, there was on the first day of January 1865 and thereafter, no valid subsisting eopyright of the books published by said Wheaton in Philadelphia in 1836 and 1846 as aforesaid.

That said eopyrights of said books published in 1855 and 1863, and taken out as hereinbefore stated, were operative and valid and secured the exclusive right to said books respectively, only so far as said books differed from the said books of said Wheaton, published in 1836 and in 1846 as aforesaid, and that all such differenees were due to the labors of your orator, hereinbefore mentioned.

And your orator shows that it was a part of the said agreement made through the ageney of said Parsons between your orator and the said Mrs. Wheaton, that the said Mrs. Wheaton should exeeute and deliver to him a formal ~~statement~~ of such a nature as to admit of being recorded in the office of the Clerk of the District Court, in pursuance of the Statutes of the United States relating to copyright, for the more conveniently seeuring to him his rights in the premises, and for the more conveniently enabling him to protect the same by aetions at law, and otherwise; that by reason of the premises your orator is the true and equitable owner of all the matter embraeed in and seeured by said copyrights of 1855 and of 1863, by reason whereof your orator is entitled to reeeive, and the representatives and sueeessors of the said Mrs. Wheaton are bound to exeeute and deliver to him a good and sufficient deed of assignment of said copyrights, and all the rights thereto and thereunder. And your orator avers that it will be eonvenient for your orator, for the purposes aforesaid, to reeeive and have the same.

And your orator shows that the said Mrs. Wheaton died on or about

the fifth day of March 1866. That the said Martha B. Wheaton and Mrs. Little, wife of the respondent Little, were the only descendants, heirs or distributees of said Mrs. Wheaton, that before the death of said Mrs. Wheaton, all the possible right which might accrue to the said Mrs. Little in the premises had been duly released, assigned and conveyed to the said respondent, Miss Wheaton. That on or about the 10th day of April, A. D. 1866, the said Martha B. Wheaton was duly appointed administratrix of the estate of said Catherine Wheaton, and accepted and still exercises said trust.

And your orator further shows, that said other respondents had full notice and knowledge of said agreement; and that they can have no other or greater rights in the premises than the said Wheatons could exercise or convey, and that by virtue of said agreement the said respondents are bound to make no use whatever of the labors or matter contributed by your orator, without your orator's written consent.

And your orator avers that in the consideration of a Court of Equity, by virtue of said agreement, and said written memorandum, your orator is taken and deemed to be the owner and proprietor of the copyright in and as to all matter contributed by your orator, by reason whereof, and of the Statutes of the United States relating to copyright, the respondents are bound to make no use whatever of any labors or matter so contributed by your orator to either of said books so edited by your orator.

But so it is, may it please your Honors, that said respondents, unmindful of their duty in the premises towards your orator, both according to the direct and express covenants of said agreement, and arising from the title and ownership of your orator in and of the said copyright, and the rights secured to him as such proprietor by the said Statutes of the United States, and combining and contriving to injure and oppress your orator, have used, and have made an unlawful, unjustifiable and piratical use of the labors and of the matter contributed by your orator as aforesaid, as follows:

Your orator is informed and believes that the said firm of Little, Brown & Co., at some time to your orator unknown, procured and induced the said Miss Wheaton, in her own behalf and in behalf of her mother, the said Mrs. Wheaton, (she then being, as your orator is

informed and believes, unable to attend to business from age and infirmity,) to consent and agree that said publishing firm of Little, Brown & Co. should publish an edition of Wheaton's Elements, and should procure the same to be edited, and notes to be prepared for the same by some person other than your orator.

That thereupon said firm procured and employed said R. H. Dana, Jr., one of the respondents in this cause, to edit said proposed edition, and to prepare notes as aforesaid.

And your orator shows that said doings of said respondents were unknown to your orator, and, as your orator believes, were carefully concealed from your orator by said respondents.

And your orator further shows that without the consent of your orator, the respondents have caused to be printed, published, and publicly sold, a book entitled:

"Elements of International Law, by Henry Wheaton, LL.D., Minister of the United States at the Court of Prussia; Corresponding Member of the Academy of Moral and Political Sciences in the Institute of France; Honorary Member of the Royal Academy of Sciences at Berlin, etc., etc. Eighth edition. Edited with notes by Richard Henry Dana, Jr., LL.D. Boston: Little, Brown and Company, 1866."

That the same was edited and the notes thereof prepared by said respondent Dana, to the end that they might be so published, that the same has been procured to be printed, and has been published by said respondents composing the firm of Little, Brown & Company, and that the said respondent Wheaton hath claimed to be the proprietor thereof, and hath deposited the title page of the same in the Clerk's office of the District Court for this District, and hath taken other steps to secure the copyright thereof, according to the Statutes of the United States, all of which has been done in pursuance of said agreement of said respondents with each other above set forth.

And your orator shows, that the respondents sometimes pretend, as stated by them in the preface to their said pirated book, that their said book contains the text of said Wheaton's treatise, as revised by said Wheaton, and their said book contains nothing but said text as revised by said Wheaton, and the notes of said Wheaton and the original matter contributed by said respondent Dana, and that the notes of your orator

form no part of said book, and that in preparing said book, no use whatever has been made of the labors of your orator in the premises, whereas your orator charges that the said pretences are wholly untrue.

And the respondents, for the purpose of misleading the public and increasing the sale of their said book, by means of the reputation acquired by the said annotated editions of your orator, sometimes advertise and pretend that their said book is the eighth edition of said Wheaton's elements, and is a revised edition, and that the former editions have been revised by the said Dana, whereas your orator charges that the said pretences are untrue, and that as to the part thereof which said respondents pretend is the text, and notes of said Wheaton, no revision has been made or attempted by said respondents, as hereinafter set forth, and as to the parts which the respondents call the notes of said Dana, though the same are in great part taken and copied from the notes of your orator, yet that the respondents have no right to use your orator's notes, either revised by said Dana or in any other form. Your orator shows that no final revision of the text was ever made by said Wheaton. That the edition published in Philadelphia in 1846, as aforesaid, contained much matter not found in the French edition of 1848, and that said French edition contained much new matter never written by said Wheaton in English. That thereupon your orator, by the exercise of so much labor, industry, skill and judgment as was requisite, prepared a text such as in his opinion the said Wheaton would have made it, had he lived and revised it, omitting many pages found in the edition of 1846, and inserting upwards of thirty pages found in the edition of 1846 and not found in the French edition of 1848, the last one prepared by Mr. Wheaton, and translating from said French edition and inserting upwards of thirty pages not at any time written by Mr. Wheaton in English; all of which was stated on page clxxxiv. of the Introductory Remarks of the edition of 1855, and was well known to the respondents.

And your orator shows that the "text" of the respondents' said pirated book is exactly and in every particular copied from and conformed to the text of the edition of 1863, so prepared and revised by your orator aforesaid.

Your orator shows that at the time your orator prepared his said edition of 1863, there was no book on International Law which did

collect or had undertaken to collect and present in a convenient form for reference, all the authorities bearing upon the different questions of International Law discussed or referred to in said Wheaton's Elements or your orator's Annotations. That the said authorities consisted of judicial decisions, of the diplomatic discussions by the most distinguished diplomatists, and of the dissertations, treatises, and lectures of the most learned publicists and writers upon the Law of Nations. That your orator, in addition to the matter entirely original with himself, undertook to collect and present, and by considerable amount of labor and intellectual exertion, did collect and present in his notes, and in a convenient form, with reference to each question so discussed, the decisions and opinions as aforesaid, giving them in full (the foreign ones being translated in English by your orator for said edition of 1863), where they seemed to your orator sufficiently important so to be given, and in other cases referring to them by giving the name of the book and the page where the passage referred to could be found.

Your orator further shows that a very large number of the authorities so collected and cited or quoted by your orator, and particularly those relating to diplomatic discussions and negotiations, and those showing the way in which cases involving principles of international law have arisen between different nations and have been determined, are to be found in newspapers, gazettes, Parliamentary debates, the series of books known as the Annual Register, Annuaire des Deux Mondes, Almanac de Gotha, different collections of treaties, as well as in the memoirs or biographies of the principal persons who were concerned or engaged in them, and other books not treatises on international law. That the number of books and papers of that nature examined by your orator in searching for the authorities and matters cited by him, is so great that it is only possible to collect said authorities by devoting much attention to the subject for a great many years, and by making and preserving memoranda of such matters bearing upon the subject as from time to time might come to the knowledge of a person devoting a large part of his attention to such matters, and reading all such books as might relate to the subject, and availing himself of much intercourse with persons conversant with the subject.

That there is no book which can serve as an index or digest to assist an author in any material respect in collecting such authorities.

And your orator avers that for upwards of thirty years he has availed himself of all the opportunities which have been open to him, by reading and otherwise, in this country and in Europe, where he spent much time for that purpose, to collect authorities of the nature referred to, and that such of them as he thought pertinent he embodied in his said annotations, giving from said sources or others referred to a sufficient history of the events which gave rise to the questions involved.

And your orator shows that for the purpose of perfecting his annotations in this respect, your orator spent much time and labor in examining the manuscripts deposited in the State Department of this Government at Washington, and procured many valuable manuscripts from other sources. And from said papers and from many other sources, your orator ascertained many facts not elsewhere stated or to be learned, and made many extracts and quotations, all of which your orator printed and published in his said annotations, and which have never been printed or published except in your orator's said annotations, nor collected except by your orator.

And your orator shows that in preparing said text he exercised a considerable amount of skill and judgment in the arrangement of his annotations, and in combining and connecting them with the text, and that he prepared and caused to be prepared a complete index to the same.

And your orator avers that the respondents in their said book have copied, conformed to, and pirated the said annotated book and the said annotations of your orator, and have used and availed themselves of the said book and annotations and the said labors of your orator

And your orator shows that the respondents have printed a large number of copies of their said book, and on the of 1866, and at divers other times have exposed for sale and have sold one or more copies of the same, and threaten and intend to continue to print, expose for sale, and sell other copies of the same.

And your orator shows that it was his intention to publish his annotations either as notes to some book of said Henry Wheaton or in the form of an original work, so soon as he should have fulfilled the undertakings made to said Brockhaüs for the benefit and at the request of said Mrs. Wheaton as aforesaid, and as soon as said edition of 1863 should be exhausted, your orator not being willing to deprive

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~~the said Mrs. Wheaton of any income which she might derive from the sale thereof.~~

That said intention was well known to said respondents.

That said book of the respondents is and was intended to be a competing book with said Lawrence's Wheaton, and with any books in which your orator might publish his annotations as aforesaid, and was intended by said defendants to supersede and take the place of said books.

That in pursuance of said intention, and knowing that your orator was about to go to Europe in the autumn of 1865, for the purpose of superintending the publication by said Brockhaüs of your orator's annotations, prepared and revised in pursuance of the said agreements between your orator and said Wheatons and said Brockhaüs, and for the purpose of preventing your orator from publishing his said annotations at such time as should keep the market supplied with copies of his annotations after all the copies of said edition of Lawrence's Wheaton should be sold, and knowing that the only reason which had prevented your orator, or might prevent him in the future from publishing said annotations as aforesaid, had been his desire to comply with such requests as Mrs. Wheaton might make with reference to your orator's editing different editions of Wheaton's Elements, and well knowing that said proposed book would be a violation of the rights of your orator, and believing that it would be objected to by your orator, said respondents not only concealed from your orator that they were preparing said book, but expressly informed your orator in or about the month of September 1865, that many copies of said Lawrence's Wheaton remained unsold, and that it sold only tolerably, and so contrived that your orator did not know of their said intentions and doings until after the day on which he had appointed to sail for Europe as aforesaid, when he accidentally heard of the same,—his departure having been unexpectedly prevented.

And your orator shows that afterwards, and on or about the first day of January 1866, your orator determined to publish his annotations, and determined to publish a new edition of Lawrence's Wheaton, and negotiated with a book-publisher to that end; but that ~~said~~ respondents, and particularly said Little, for the purpose of preventing your orator from publishing his said annotations in season to compete in the market with

respondents' said book, upon learning of said negotiations made such threats to said publisher and did such other acts as put an end to said negotiations; and that similar negotiations were begun by your orator with other publishers, and were broken off and frustrated by similar threats and unlawful and oppressive acts of said respondents.

And your orator shows that said publishing firm of Little, Brown & Company is very wealthy and of great influence among book-sellers and publishers, and that by means of said wealth and influence, and of said threats and conduct, and for the purpose of preventing your orator from enjoying his just rights in the premises, and in pursuance of their said agreement with reference to the publishing of said pirated book, the respondents have hitherto prevented your orator from publishing his said annotations. All of which actings, doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in this Court where matters of this kind are properly cognizable and relievable; to the end therefore that the said respondents and their confederates, when discovered, may, upon their several and respective corporal oaths, and to the best and utmost of their respective knowledge, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were now repeated and they severally interrogated thereto; may it please your Honors to grant unto your orator the writ of injunction issuing out of and under the seal of this Honorable Court, directed to the said respondents, commanding and strictly enjoining them, and each of them, not to sell or expose to sale, or cause or permit or be any way concerned in the selling or exposing to sale or otherwise disposing of any copies of respondents' said book. And that they may be ordered to render an account of the copies of the same that have been sold and of the profits thereof, and pay over the same to your orator; and to surrender and deliver up to the complainant all the copies of the said book that they have on hand, and to pay to the complainant his reasonable costs of suit, and that the respondents, or such of them as have or claim any interest therein, may be ordered to make and deliver to your orator a good and sufficient deed of said copyrights of 1855 and of 1863, as aforesaid; and that your orator

may have such other and further relief in the premises as equity and good conscience may require and to your Honors may seem meet; may it please your Honors to grant unto your orator the Writ of Subpœna issuing out of and under the seal of this Honorable Court, directed to said respondents, commanding them on a certain day to be and appear before your Honors to answer the premises and to stand to, perform and abide such order, direction and decree as to your Honors shall seem meet.

J. J. Storrow

~~J. J. Storrow~~,
Solicitor, and of Counsel.

~~W. B. LAWRENCE~~.
W. B. Lawrence

UNITED STATES OF AMERICA,
STATE OF ~~RHODE ISLAND~~. Massachusetts

On this ~~fifteenth~~ Twenty-fourth day of October A.D. 1866, before me came William Beach Lawrence, who being by me duly sworn, deposed and said that he is the complainant in the preceding Bill of Complaint mentioned; that he has heard said bill read and knows the contents thereof; that the same are true so far as stated of his own knowledge, and so far as stated upon his information and belief he believes them to be true.

~~WM. LUPIN~~,
~~*Com'r C. Court, R. I. District.*~~

Before me
E. Merwin
U. S. Comr

Circuit Court of the United States.

DISTRICT OF MASSACHUSETTS, SS.

IN EQUITY.

WILLIAM B. LAWRENCE

vs.

RICHARD H. DANA, JR., ET ALS.

DEPOSITION OF WILLIAM BEACH LAWRENCE.

William Beach Lawrence, of lawful age, being duly sworn, doth depose and say, my name is as aforesaid; I am a citizen of Rhode Island; I reside at Newport, Rhode Island; I am the complainant in this cause

I first knew Mr. Wheaton in 1823, when we had law offices in the same building in New York, and though much his junior, we soon became quite intimate.

We were both in Europe at the same time in diplomatic service, between 1826 and 1829, and after I left the public service I lived in Paris for some time. During all the time that we were colleagues we were in almost daily friendly correspondence upon the subject of our respective official duties, particularly such of them as involved questions of international law.

From that time onward our intimacy constantly increased, and we were in the habit of interchanging our views particularly upon interna-

tional and political questions. A considerable portion of the "Elements" was written during his leave of absence of six months in 1834, most of which was passed at my house in New York. My only professional occupation at that time was in arguing cases before the French commission under Mr. Rives's treaty of 1831, which involved chiefly questions of international law, and much of the time we passed together in my library conferring very freely about our respective studies.

He published his first edition of the Elements in London in 1836 — he being in Europe — and the edition in Philadelphia in 1836, if I remember correctly, was printed from the London sheets.

After he had written the "History of the Law of Nations," he sent the MS. to me, requesting me to do the best I could with it, and leaving it to my discretion what to do with it. I sold it to Gould & Banks, and superintended its publication for Mr. Wheaton, preparing the index, &c. When he published his next edition of the "Elements," in 1846, he was living in Berlin, and called upon me again to arrange for and supervise the publication.

The title to this edition is stated in the bill. 1,500 copies were printed, I think.

The letter of July 10th, 1844 (a copy of which is hereto annexed marked A), illustrates our relations to each other.

My intimacy continued with him constantly increasing, and a few weeks before his death we were in Washington together, whither I went as his friend to argue his copyright case, in the matter of his Reports.

In 1853, before the edition of 1846 was entirely exhausted, Mrs. Wheaton asked me whether something could not be made for her support out of some of her husband's literary labors. I answered that I thought there could be out of the "Elements," and that I was willing to undertake to prepare such notes and additions to that book as should bring it down to the present time. In reply to that offer she wrote to me the letter a copy of which is hereto annexed, marked B.

I did revise the text and prepare notes, which were published by Little, Brown & Co., in 1855, under the title mentioned in the bill.

Soon after I began these notes, a daughter of Mr. Wheaton was married to Mr. Little.

I devoted myself exclusively for two years to the preparation of these notes, and superintended the printing of the edition, and prepared an

Index of the whole work. Upon the appearance of this edition the book was adopted by the United States for distribution to our Ministers and Consuls, &c., Congress having made an appropriation for the purchase of 500 copies; by the English government for the same purpose, and for the examination of candidates for diplomatic service, by the English Universities and by the Inns of Court as a text book for students.

In the spring of 1860 I was in Paris. I was then requested by Miss Wheaton, on behalf of herself and her mother, and by Mr. Little, to edit a new edition to be published by Little, Brown & Co., the edition of 1855, consisting of 2,000 copies or more, being then exhausted. This edition was published in 1863, with the title stated in the bill.

While abroad it occurred to me, in view of the effect they had already had in increasing the sale of the English editions of the work, that Mr. Brockhaüs, who had published both French editions, might be induced to pay something for the notes I contemplated preparing for the new edition, and I made a proposal to him to that effect. He replied that he was willing to pay for copyright of the new matter if it should be furnished him. Afterwards it was proposed to him to pay for editions previously published by him. He declined to pay anything for them, but expressed his willingness to enter into some arrangement which should give him the right to publish the new matter. These negotiations with him continued, without coming to any result, until after all the sheets of the edition of 1863 had been transmitted to him in advance of publication. He then stated that having examined the new annotations, he was disposed to make a definite arrangement — which he stated — which should give him the right to print the new matter and release him from all claims, honorary or otherwise, with reference to the former editions.

Before replying to this offer I wrote to Miss Wheaton, June 2d, 1863, a letter which contained the following passages:

"I am sorry to see that you did not understand my letter. I thought I had made it clear in a delicate way that I was not prepared to do what Brockhaüs requires."

I then speak of some annoyances connected with the publication of the book in the previous winter, and proceed: "I came to a conclusion at that time, from which I have seen no reason to vary, that I will occupy

myself hereafter on no literary work which is not my own property, and over which I do not possess exclusive control. . . . . I had apprised Mr. Brockhaüs, before the receipt of your letter, that no arrangement could be made in which I was included till I came to an understanding with you. . . . . The money you may receive forthwith, as he will pay it under my assurance to complete my task, but in such event I must have an assignment of the copyright here as well as in Europe, so that, if I do anything more, which at my age is very doubtful, I may thereafter be free from all shackles.

"If you think it important I will come up and see you, but it will be unnecessary unless you are prepared to assent to the arrangement I have indicated."

Her reply was a request to me to come to Boston as suggested in my letter. I have it ready to be produced when called for. I came to Boston on or about June 13, 1863, in pursuance of my said suggestion and her said request, and met Miss Wheaton. She then told me that her mother was very sensitive about parting with the entire legal title to the copyright, and had a strong feeling on this subject, and that she wished I would see Mr. T. Parsons, who was fully authorized to represent her and her mother, and arrange some way with him which would not wound Mrs. Wheaton's feelings in this respect. I assented to this, and met Mr. Parsons at Cambridge. Mr. Parsons said to me that he was very anxious to secure the 6,000 francs which Brockhaüs offered, and that he had told Mrs. and Miss Wheaton, or one of them, that the money could not be obtained without my consent and intervention. We conferred together some time as to what arrangement should be made.

I will here state that nothing was said at this interview about the validity or legal effect of any of the copyrights, my attention never having been directed to that matter, of which the publishers had always had exclusive charge.

Mrs. Wheaton's desire, as expressed to me, was to keep the nominal title to what her husband had left. We fully agreed that she should have no claim to anything in the book that resulted from my labors. He then wrote the memorandum, a copy of which is hereto annexed, marked C., and the original of which I have ready to be produced at the hearing, or when called for.

I also wrote a letter to Brockhaüs which I handed to Mr. Parsons. The memorandum annexed is in Mr. Parson's hand-writing, and the signature and date is in the hand-writing of the respondent, Miss M. B. Wheaton. It was delivered to me on the 14th or 15th of June 1863.

Subsequently some more interviews took place between us, on the following day I think, in the course of which some change was made in the agreement as to the French editions of the "Elements" and the "History," and the expense of translation, but no change was made so far as related to the interest in the American editions.

In the course of this subsequent negotiation I received a letter from Mr. Parsons, dated June 19th, 1863, in which he informed me that my letter to Brockhaüs had been sent, and that Mrs. Wheaton had drawn on Brockhaüs a bill for 6,000 francs, which bill he subsequently informed me had been paid.

In my letter to Brockhaüs, which was sent to him by Mrs. Wheaton, I had agreed to review my notes, so as to adapt them for a European edition and to translate them into French.

I occupied myself with that business, and in the summer of 1865 I had so far completed it that I took my passage in the steamer from Boston, to sail in the month of October for the purpose of supervising the publication at Leipsic.

In the month of September I was in the Store of Little & Brown in Boston; I there saw Mr. Flagg. In the course of our conversation I asked him about the sale of the edition of 1863. He stated that it was not exhausted, and that it only sold tolerably well. No intimation was given me that a new edition was then in preparation.

At that interview I informed him of my intended departure for Europe and of the object of my visit.

My private affairs unexpectedly delayed my departure, and after the sailing of the steamer, in which I had taken my passage, and I think in the early part of November, I accidentally learned in the course of conversation with an acquaintance, that Mr. Dana, one of the respondents, was preparing a new edition of "Wheaton's Elements," to be puplished by Little, Brown & Co. I came to Boston, and not being able to learn anything about it from any of my friends there, I called upon Mr. Dana,

at his office. He informed me that he was preparing such an edition, but that he was well aware that he was bound to ignore all my notes and contributions to the same extent as if they were locked up in my desk, and never printed or published.

On the 6th of January I wrote a letter to Mr. Parsons, which contains the following: After speaking of Mr. Brockhaüs' offer, in 1863, I said, "I therefore asked as a condition for undertaking, in addition to what I had already done in the two editions, a task which I then supposed would occupy six months, but which, at the end of two years, is still uncompleted, an assignment of all title to the copyright. On these terms I proposed to authorize Mrs. Wheaton's draft on Brockhaüs. That this sum was obtained exclusively through my instrumentality is not the less unequivocally declared in a letter of Mr. Little, which I have before me, than in those of Miss Wheaton, written at the time, on her own behalf and on that of her mother.

"It was at this period, June 1863, that your intervention occurred at the request of Miss Wheaton.

"Mrs. Wheaton, it was understood, while not denying that I had amply earned all that I asked, had expressed a sensitiveness as to abandoning all title in the last of her husband's productions that remained to her. Actuated by the same motives which had ever governed my conduct towards the family, I assented to a memorandum, which you drew up and sent with an explanatory note to Miss Wheaton. This memorandum, after being signed, was returned to me, and is now in my possession.

"By it it was expressly agreed that Mrs. Wheaton would make no use of my notes without my written consent; that she would give me the right to make any use that I wished of them, and that she would, on the payment of the draft on Brockhaüs, execute a formal instrument, to that effect, and which it was understood would be recorded if I desired it."

I then refer to my interview with Mr. Dana, and say:

"In the course of his remarks, Mr. Dana disavowed, in the fullest manner, any right to the use of my notes, or other contributions to either of the editions published by me. These, he said, he knew that he 'was bound to ignore to the same extent as if they were still in manuscript and locked up in my desk, and never printed or published.'"

In reply, I received from Mr. Parsons a letter as follows:

CAMBRIDGE, January 19, 1866.

"DEAR SIR: I read enough of the document received by me by mail to know its subject, and then sent it to Mr. Dana.

"I am not the lawyer or counsel of any party in this question, and you will, I am sure, see that in a matter of so much importance I should do wrong to offer any advice, or even form an opinion, without thorough investigation and careful consideration. And this my engagements make impossible.

"Very respectfully, your obedient servant,

"THEOPHILUS PARSONS.

"The Honorable WILLIAM BEACH LAWRENCE."

A copy of so much of the above letter to Mr. Parsons as contains a statement of the contents of the memorandum I caused to be sent to Messrs. Little, Brown & Company on the same day that the letter was sent to Mr. Parsons.

The original papers, copies of which, or of parts of which, are embodied in this affidavit, I have ready to be produced at the hearing if called for, except such of them as are letters which have been sent to the respondents.

My attention was very early directed to the subject of international law, first by a strong taste which I had for that study, and, afterwards, by my duties in connection with the American Legation at London. From that time onward, I have occupied myself very much with this matter, and a considerable part of my professional business for many years required me to make a special study of very many questions of international law. I have made it a considerable part of my studies to read the different works on this subject as they have appeared from time to time.

It has also been my habit, for thirty or forty years, to read very constantly all, or nearly all, of the foreign papers and periodicals, and American State Papers, which contained diplomatic negotiations and discussions; and I have been in the habit from them and from all other sources which came under my observation or within my reach of mak-

ing and preserving full memoranda and references as to all matters transpiring at the time, and as to previous matters referred to, or which came to my knowledge, so far as they related to questions of international law. In this manner I have been able to collect, and I have collected, a very large amount of authorities, consisting of diplomatic discussions and negotiations between all the civilized nations.

There is no index or digest from which one can find all these matters. There is no writer who has collected them anything like as fully as I have done.

In my collection, I have made it a great point to preserve, and I have preserved, the original text of discussions and dispatches, because I believed that no paraphrase of mine could take the place of the original texts, and for my edition of 1863, I have translated all quotations which were in foreign languages. I have also collected a very large mass of authorities, consisting of the opinions of writers on the laws of nations and judicial decisions. These I have collected both in the course of my studies above indicated, and of the various professional duties which have required me to make a particular study of many branches of international law.

Since 1822, I have been collecting a special library of books bearing upon the subject of international law. This library now comprises upwards of five thousand volumes in nearly all the modern languages, embracing not only the works of writers upon, or connected with, this subject, but a more perfect collection than is to be found anywhere in the United States of public documents of different nations, and other original documents, contained both in reports, periodicals, volumes of newspapers, &c.

Both this collection of books and my knowledge of authorities have been very freely and frequently availed of by gentlemen in public and professional life as being the most complete extant.

All these materials I made use of in preparing my two editions. I also read over again all the principal writers upon the subject, especially the more modern ones, and made from the book of each writer such extracts and citations as I thought fit. I also read over many printed collections of public documents, &c., where I thought I might find valuable matter; and by the kindness of Mr. Marcy, Mr. Cass, and Mr.

Black, while those gentlemen were Secretaries of State, extended to me both by reason of previous friendship, and the work on which I was engaged, I was enabled to examine all the MSS. in the State Department that I desired. A room in the department was placed at my disposal, and such orders were given as enabled me to have access to all the papers of the department. I spent several months in Washington solely occupied in this matter, and I extracted from these MSS. for my notes a very considerable amount of matter never printed elsewhere.

After Mr. Seward was appointed Secretary of State, in answer to my request to be allowed to make some further searches, he informed me that it had been determined not to allow any one not connected with the department to inspect its confidential correspondence.

I also used in my annotations MSS. furnished me by Mr. Butler, formerly Attorney General of United States, and other gentlemen, which have never been published except in my notes and which have remained in my possession since I first received them.

In visits which I have made to Europe, I have been very much assisted in my researches, the results of which have been embodied in my annotations, by information communicated to me by many gentlemen, as well those in official stations as others, engaged in similar pursuits, with whom I have had intercourse personally and by correspondence. In these and other ways I have been enabled also to put into my annotations quotations and citations from books and newspapers which are not found in any other similar book, and I believe are not to be found in this country out of my own library, and some of them are not in my library. Some quotations have been made at second hand, the originals not being accessible, but in those cases I have always stated the source from which I took them. I will add that all the expenses attendant upon these matters, which have been very considerable, have been paid from my own pocket.

The mass of materials which I have collected in the manner indicated is very large. I have not put all of it into my notes. I have selected such portions as in my judgment were most fit to go into it. In the preparation of the new French edition, on which I am engaged, I have left out some things, and I have inserted others which might have been, but were not, inserted in the edition of 1863. I have also in my French edition added many citations relating to matters which have occurred

since the preparation of the book of 1863, as well as from the works of publicists which have appeared since that time.

In preparing the edition of 1855, I found that there was no proper text left by Mr. Wheaton. Many pages which were in the edition of 1846, the last one in English, were not reproduced in the French edition of 1848. Many new pages were written by Mr. Wheaton in French for that edition and never printed by him in English.

I took the edition of 1848 as the standard. I retained all such parts of the editions of 1846 as were reproduced in the edition of 1848, using the discretion given me by Mr. Wheaton by his letter of July 10th, 1844, previously referred to. I omitted about thirty pages that were in the edition of 1846, and retained some pages which were in that edition, but which he had omitted in the French edition. I translated from the French edition of 1848 about thirty pages never published in English, and I inserted them in their proper places in the book, as will appear in the following detailed statement. In it I have used the letter "L" to denote my book of 1863, and the letter "D" to denote the respondents' book.

The variations between Mr. Wheaton's text, as given in his edition of 1846 and mine of 1863, with which latter Mr. Dana's is identical, will be indicated in the following statement, though the liberty which is taken in D. of new numbering the sections may occasion some confusion in tracing them. The reference to L. is to ed. 1863, the paging of D. is at the bottom of his page.

The very first paragraph in L., and copied from it by D., is not to be found in any edition published by Wheaton, nor is there any MS. of it, to my knowledge, by Wheaton in English. It constitutes the first page in L. It is, according to D.'s paging, his 4th page, though the first of the text. It contains about twenty-four lines. It commences, "There is no legislative or judicial authority, etc." The last edition by Wheaton begins with what is the § 2 of L. and of D., "The leading object of Grotius, etc." See ed. 1846, p. 27, the first of the text. The second variation begins at p. 4, line 19, L., p. 6, line 8, D. It embraces four entire pages, 6–9 of D., L. pp. 4–8, line 6. These pages are substituted to pp. 30–32, line 14 of ed. 1846.

The third variation is p. 9, two lines from bottom to p. 14, line 18 in L.; p. 11, 12 lines from bottom to end of p. 15 in D. The whole

matter beginning, "The public jurists of the school of Puffendorf" was inserted for the first time in L. without any corresponding omission from edition of 1846.

The pp. 36–42 in edition of 1846, are not to be found, at least in the same form, in the editions of L. and D., and L. page 16, line 16 to p. 18, line 9, D. p. 17, line 22 to page 18, line 33, are not in Wheaton's ed. of 1846.

The passage in L. p. 18, lines 5 to 9, D. p. 18, lines 28 to 33, "binding upon the whole human race," etc., not in French, p. 21. The six last lines of p. 45, ed. 1846, omitted at p. 22, line 6 of L., and p. 22, line 17 of D.

The divisions of International law, p. 46, ed. 1846, and which would occur in L. p. 27, and D. p. 23, are wholly omitted. The last paragraph of the § "It is perhaps, etc.," will be found substantialy in L., p. 14, line 29; in D. p. 15, line 27.

L. p. 27, D. p. 23, both omit 1st Source of international law given in ed. 1846, p. 47. On the other hand the encomium on text writers is not in ed. 1846, but at p. 27, line 7 L.; p. 23, line 13 of D.

What follows "Treaties of Peace," in L. p. 27, in D. p. 24, is not in the French edition, p. 25. It, instead of referring to Mr. Madison, cites Bynkershoek, which is the authority to which Mr. Madison himself refers.

The whole of this section, entitled "Sources of international law," is very different in L. pp. 27–30, from ed. 1846, which moreover does not agree with the French, pp. 25, 28. It is arranged by D. according to L.'s method, and not according to Wheaton's. It is in referring to the changes here made that Dr. Twiss remarks: "It is most satisfactory to find that in the last (sixth) edition of Wheaton' Elements, (Boston 1857,) edited after his death by Mr. William Beach Lawrence, the objectionable doctrine which has been discussed in the preceding sections is no longer maintained."

The paragraph, Ed. 1846, p. 67, beginning of the page, "as to Semi-Sovereign States," is omitted in L. 58, line 10, D. 52, line 29.

The subsequent paragraph is also changed. In Ed. of 1846, it reads: "All independent States are equal in the eye of international law, whatever may be their relative power. The co-ordinate sovereignty of

a particular State is not impaired by its occasional obedience to the commands of other States."

In L. and D. It reads: "All Sovereign States are equal, etc. The sovereignty of a particular State, etc. *Sovereign* is inserted for *independent*, and *co-ordinate* is omitted.

The words in Ed. 1846, p. 67, "still the soverignty of the inferior ally or protected State remains, though limited and qualified by the treaties of alliance and protection," are omitted in L. and D. On the other hand in L. 59, D. 53, is inserted, "States which are thus dependent on other States in respect to the exercise of certain rights, essential to external sovereignty have been termed Semi-Sovereign States."

The words in Ed. 1846, p. 67, line 28, "This State may be occasionally, etc., to end of paragraph, omitted in L. 59, D. 53, so likewise p. 68, line 13, "by the 10th article, etc."

The paragraph L. 74, line 13 to line 27, D. 63, line 7 to end of page. "In pursuance of this stipulation," not in Ed. 1846.

Ed. 1846, p. 77, line 5th to page 79, line 5th omitted in L. p. 75, line 5, and D. p. 64. The remainder of the paragraph L. p. 75, line 5 to 21, D. 64, line 8 to line 25 new.

L. p. 76, lines 5 to 9, D. 65, lines 13 to 17 not in ed. 1846, p. 79.

In same page L. line 13 and D. line 19 is inserted, "and the government acts not only upon the states which are members of the confederation, but directly on the citizens." and D. line 24, L. line 20, "The compositive state, which results from the league, is alone a sovereign power." These are not in ed. 1846.

There is inserted also in L. 76, line 20, D. 65, line 27, "Germany as it has been constituted under the name of the Germanic Confederation, presents the example of a system of Sovereign States united by an equal and permanent confederation." Not in ed. 1846.

The paragraph p. 80, line 3 to line 8, ed. 1846, omitted in L. and D.

Ed. 1846, p. 84, lines 12 to 24 transposed in L. 82-83 and D. 70 till after the succeeding paragraph.

The paragraph L. 86, line 11 to line 23, D. p. 73 line 6, varies materially from ed. 1846, p. 87, line 13 to line 28.

"The rights to which sovereign States, &c.," L. p. 115, D. 89, was never in English, and the two next paragraphs are greatly amplified from ed.

1846, p. 101, see French ed. t. 1, p. 75. Lawrence's is from both and not the same as either.

Paragraph inserted D. 90, L. 116, beginning "In the exercise and" not in ed. 1846, p. 102, but in French ed. t. i. 76.

L. p. 115, and D. p. 89, the words "because they are not limited to particular circumstances" inserted after absolute international rights of States. Pp. 117, 119, in ed. 1846, are not in Lawrence p. 130, or Dana 117, nor in the French ed. t. i. p. 92.

P. 160 of L., from line 6 to line 23, pp. 160 – 163 being the same as p. 132–135, line 14 of D., was inserted anew by Lawrence, see ed. 1846, p. 126. These pages were translated from French ed. 101–105.

The paragraph "Thus full and absolute jurisdiction," ed. 1846, p. 141, not in L. 192, D. 155, nor in French ed. p. 121. Ed. 1846, p. 130, 1801, is 1800 in Lawrence, p. 167, Dana 139.

A marriage contracted in a foreign country by a fraudulent evasion of the laws of the States to which the parties belong, might seem, on principle, to be void in the country of their domicile, though valid under the laws of the place where the marriage is contracted." Ed. 1846, p. 137, is changed in L. p. 181, top of page; D. p. 150, line 3 into "Huberus holds that the contract of marriage is to be governed by the laws of the State to which the party is subject." The latter is translated from French ed. t. i. p. 116.

These words, "These cases seem to be exceptions," etc. ed. 1846, p. 137, omitted in the ed. of Lawrence and Dana.

By accident Mr. Wheaton's authorities for his paragraph on naturalization, which ought to have appeared in L. p. 173, D. 142, and which appeared in L's edition of 1855, to which D. seems not to have referred, were omitted in that of 1863, though mentioned in the Errata. These authorities are Term Reports, vol. VIII, p. 31. Bos. and Pull, Reports, vol. 1, p. 143, Wilson *vs.* Maryatt.

In the same way D. has followed L. in what he omitted in the same, article after the word jurisdiction. Kent's Commentaries on Amer. Law, vol. II, pp. 186 note, 5th Ed. and after lex loci contractus. John Ch. Rep. vol. III, p. 211, De Couche *vs.* Savetier. See ed. 1846, 133–4.

The following passage in Ed. 1846, p. 144, last line, is dropped in L. p. 196, and D. p. 158: "It has been seen that a license to pass

through a territory with an army, implies immunities not expressed, and it was material to inquire why the license itself may not be presumed," also a part of sentence of 2nd paragraph.—Ed. 1846, p. 146, dropped in L. p. 197, D. 159, line 15. They are: "it would be difficult to assign a reason for withholding from a license thus granted, any immunity from local jurisdiction which would be implied in a special license."

Ed. 1846, p. 146, line 23, "In all cases the exemption," etc., to p. 147, line 17, etc., suppressed, substituting "the whole reasoning upon which such exemption had been implied in the case of a sovereign or his minister, applies with full force to the exemption of ships-of-war in the case in question." L. 197, D. 159, line 24. This accords with French ed. Ed. 1846, 148, line 9, "To the Court it appeared." L. p. 194, D. p. 160, line 7, "according to the judgment of the Supreme Court."

Ed. 1846-148, lines 17-23. "The preceding reasoning," suppressed.

Ed. 1846, p. 150, line 24. "It seemed," etc., suppressed. Ed. 1846-151, line 14, "The arguments," etc., to "country," 152, line 15, suppressed, and paragraph. "The Court came to the conclusion." L. 201, D. 162, line 24 inserted, French, t. i. p. 129.

Ed. 1846, p. 153, line 5 to line 9, omitted, another paragraph inserted in L. 202, line 20, and D. 163, lines 26 to 164, line 10. Ed. 1846, p. 155, 3 lines from bottom to 157, 6 lines from bottom suppressed. and new matter, L. p. 208, line 18, D. 168, line 11 introduced.

Ed. 1846, pp. 159-162, line 5, beginning, "These principles," etc., suppressed, in L. 209 and D. 170, also in French edition. "Though these offences," L. 210 to 214, D. 171 to 175, omitted in the French edition.

Ed. 1846, line 3 to line 19, p. 171, and "the laws of treason," etc., two paragraphs suppressed. L. 232, D. 180, also suppressed in French 139.

L. p. 236, D. p. 189, 4 lines from bottom, to p. 189, line 3, sentence beginning: "In the negotiations of treaties," etc. This is not in ed. 1846, 175. It is in French p. 140.

Ed. 1846, 176. It follows, etc., omitted in Lawrence 246 and Dana 192.

"The same reasons, etc.," p. 196, Ed. 1846, omitted Lawrence 291, Dana 228.

All relating to African slave-trade from 256 to 280 L. is omitted in French ed.

Bankruptcy L. 293 D. 194-213 not in French ed p, 143. "The execution." &c., L. 293, D. to end of chapter omitted in French p. 149.

Ed. 1846, p. 196, 9 lines from bottom to 4 lines from bottom: "The same reasons," etc., omitted in Lawrence 291, and Dana p. 228.

The phrase "In order to establish the claim of a particular nation to a right of property in any portion of the Sea, that nation must obtain and keep possession of the portion thus claimed." Ed. 1846, p. 236, changed in L. 341, line 21; D. 269, line 15, "In order, etc., this nation must obtain and keep possession of it, which is impossible.

What follows in Ed. 1846: "The writers," etc., p. 236, line 18 to 237, 2 lines from bottom, omitted in L. and D. "II. In the second place. the sea is an element which belongs equally to all men, like the air. No nation, then, has the right to appropriate it, even though it might be physically possible to do so," inserted. L. 341, D. 269, 7 lines from bottom.

"The reasons which forbid, &c." Ed. 1846, p. 238, line 19 to line 24, not in L. and D.

L. 408, and D. 311, line omit "(5)." Ed. 1846, p. 279, 2 lines from bottom.

"The notification, etc., L. 318, D.254, line 24 in French p. 168 not in Ed. 1846, p. 236. U. S. Stat. at large, vol. IX. pp. 109, 869, new.

L. 448, D. 334, inserts as new the portion of the citation from Klüber, omitted ed. 1846, p, 304. It begins: "Except in the cases of special stipulations," etc.

Ed. 1846, p. In L. p. 861, by the omission of a comma between contraband and property, Wheaton is made to speak of "contraband property taken in breach of blockade." The phrase is properly printed, Ed. 1846, 560: "Such as contraband, property taken in breach of blockade, and other analagous cases." But the error is retained by Mr. Dana, and what shows conclusively that he never consulted any edition but Lawrence's of 1863, he inserts as his note 244, p. 703: "This should doubtless read 'contraband property, or property taken in breach of blockade." If D. had referred to ed. 1846 or to a French edit. he would not have been misled: "comme la contrebande, la propriété prise en violation du blocus et autres cas analogues." Eléments, t. ii. p. 197.

I should add that both Mr. Wheaton's French and English editions

have an appendix; the English in 80 pages, containing treaties and conventions referred to by him. This is wholly wanting both in L. and D.

Among the manuscripts obtained at the State Department, of which I made use in the preparation of my notes, I find many used in D. To the best of my knowledge there has been no printed copy made of them, except so far as they may be contained in my books. There are other MSS. also, which I have obtained from other sources, which are employed in like manner by D. Among them are despatches of Mr. Gallatin and Mr. Wheaton, drafts or copies of which are in my possession. In the following statement none are mentioned except those which D. has used.

D. p. 145, L. p. 928. Mr. Faulkner to Mr. Thouvenel, April 7, 1860. The despatches and the account of Zeiter's case, with which I had been familiar at the time it occurred, I being then in Paris, were taken by me from the MSS. in the State Department.

D. 177, L. 216. In relation to impressments, Mr. Gallatin to Mr. Clay, Secretary of State, 28 July 1827. Mr. Gallatin's MS. despatches.

D. 178, L. 221. Mr. Cass, Secretary of State, to Mr. Dallas, 8 Oct. 1860. It gives a conference between Mr. Buchanan and Lord Clarendon respecting seamen, deserters from merchant service. State Department.

D. 291, L. 377. Mr. Everett, Secretary of State, to Mr. Rives, 17 of February 1853; Mr. Buchanan to Mr. Rush, 31st March 1848, as to recognition of French proisional government. State Department.

D. 303, L. 399. Mr. Cass, Secretary of State, to Mr. Fay, Nov. 12, 1860, as to rights of American Ministers abroad, especially as to marriages. State Department.

The case of Mr. Gallatin's coachman is also mentioned by D. p. 303 I give it in the addenda 1006. I have never known of its being stated elsewhere. It occurred while I was Secretary of the Legation, and the discussion with the Foreign office was carried on by me. Gallatin's Desp. and my Private Memoranda.

D. 338, L. 454. Mr. Wheaton to Secretary of State, 8th July 1840, as to altering treaties after ratification. State Department and Wheaton's Despatches.

D. 325, L. 432. Mr. Marcy, Secretary of State, to Mr. Mason, Sept. 11, 1854, and Oct. 23, 1854. Also notes between Mr. Mason and

Count Walewski, Aug. 3 and Aug. 7, 1855, and Mr. Marcy to M.r Mason, Sept. 11, 1854, and Jan. 1855. These despatches are not found in the Annuaire des Deux Mondes cited in this place for other matters. My attention was called to them by Mr. Marcy. They regard the refusal of French Consul at San Francisco to give testimony in Court.

D. 339, L. 460. Mr. Wheaton to Mr. Butler, then Attorney General, January 20, 1855. The above is a private letter, sent to me by Mr. Butler before my edition of 1855 was published. It has been in my possession ever since. It relates to the delay of France to pay the indemnity under Rives' treaty.

D. 353, L. 473. Mr. Marcy to Mr. Mason, Dec. 8, 1856, as to the Marcy Amendment to the Declaration of Paris.

D. 418, L. 575. Mr. Cass to Mr. Clay, Nov. 26, 1858, Paris, subsequent to Congress. Doc. cited. State Department.

D. 454, L. 640. Mr. Marcy to Mr. Mason, Dec. 8, 1856, of a date subsequent to Congress. Doc. cited here — not in them.

The facts as well as the contents of the several despatches relating to the approval of the Marcy Amendment mentioned, were obtained by me from MSS. in the Department of State. I have never seen them in this connection printed elsewhere.

The case of the Bonaparte marriage, stated in D, p. 151, L, p. 18,2 and for which neither L. nor D. cites any authority, was taken by me from the French newspapers of the day and a French pamphlet account.

I have been engaged, since the publication in August last of the book of the respondents, in comparing the foot notes of that book with those in my last edition, and have verified all the statements in the affidavit of the Hon. E. R. Potter in this case, by an examination of the books from which my work was prepared. This I was able the more readily to do from having in my own library, or accessible to me in public libraries, nearly every citation, if not every citation, which I had made.

The references to authorities in D. in a vast majority of cases, are copied apparently directly from me, as is shown in the affidavit of Mr. Potter, and as to the rest, with few exceptions, from Story's Conflict of Laws, Wolsley and Halleck's International Law, U. S. Diplomatic

Papers since 1861. It is possible that in some few instances Phillimore has been looked into, though the citations, when not inaccurate, if not taken from L., are in Halleck at the place where Halleck is cited. There are also a few references to Maine's Ancient Law, a work published since my edition of 1863, and also to Abdy's Kent, which appeared within the last year, and which is, to a great extent, a commentary on my book, which is cited at nearly every other page. I am not aware of a single instance in which the notes of D. contain any new matter deduced from the references, which he has taken from Lawrence's Wheaton, or from the other authors, here mentioned, but he has confined himself either to giving their names with the titles and pages of the books, without connecting them in any way with the text, or attaching them to a paraphrase of my notes. Where he has given, as he has in some instances, extended remarks, they are in general, presented as his own original essays, without authorities.

On several occasions long lists of authorities, such as Boullenois, Rodenburg, Henry on Foreign Law, have been cited, but I have been able, in every case, to trace them to Story's Conflict of Laws, from which they seem to have been so servilely copied. A pamphlet by Pfeiffer, on the question growing out of the liability of the restored government of Hesse Cassell for the obligations contracted by Joseph Bonaparte, when King of Westphalia, has been adduced as an exception. It is cited, and its title and date as well as substance of the work, are given in Halleck p. 34, 840–3, and Phillemore, Vol. iii, p. xx, 685, 711. I had supposed that D. might have quoted Heffter from a different edition from mine, as when I cited the judgment of the Court at Aix la Chapelle from Bergsen's ed. p. 66, are cited §§ 36–39. I have seen a copy of the German edition of Heffter of 1844, in the Public Library. I find in it no substantial difference between the arrangements of the two editions, the judgment being, in each case, in a note attached to the same portion of the work. The sections to which he refers it, have no connection with the subject. There is in the same library a copy of the History (Geschicte) of Savigny, in German, but none of the *System*. They have in French both works of the same edition with mine. I may add, that of fifteen citations made by me to Westlake, thirteen, the only ones he has, are in D., in the same connection in which they are used by

me. I have not been able to make a complete examination as to other authors, beyond verifying, as I have done, those made by Mr. Potter.

In some instances, and I would refer, by way of illustration, to his note [53 p. 151, which corresponds with my note [62, p. 181. D. has simply copied me, substituting for the L. at the end of the note, D.

In general, however, without going beyond them for new matter, he has paraphrased my notes, not unfrequently mistaking their scope as well as the point for which the references were cited. I would particularly refer to [27, p. 64, corresponding with my note [30, p. 75. [202 p. 514, corresponding with L. [212, p. 705, and note D. [46, p. 137, L. [56, p. 165.

In the first case [27 D. where I had said ([30 L.) that "By an Imperial ukase of 14–26 March 1861, the Council of State of the Kingdom of Poland was re-established," D. says, "In 1861 the diet of Poland was re-established." Wheaton's text states that the last diet of Poland was abolished in 1832. In the case of note D. [202, L. 212, the question in 1860 was as to *certain districts* of Savoy adjoining Switzerland neutralized in 1815, and to that *all* the references given by D. as well as by L. apply; D. says "The Confederation claimed that, if released by Sardinia, Savoy ought to be united to them."

In the case of note D. [46, L. [56, an accidental omission in my translation from Tripier, attempted to be paraphrased by D., of the word *real*, unimportant in my case on account of the context, has led D. into a total mistake of the French law there referred to, and which requires the recording or inscription of "the transfer *inter vivos* of *real property* or of (real) rights (droits réels) susceptible of hypothecation in the bureau des hypothéques." An examination of either Westlake or Tripier, from the former of which D. copies a quotation of mine, would have prevented the error. Moreover the *code civil* (art. 2114) shows that only real property and *real rights* are susceptible of mortgage or (hypothéque), D. renders (p. 137) *droits réels* "corporeal personal property."

With regard to many of my citations copied into D. as they were made during a period running through nearly forty years, and in many cases from newspapers and ephemeral pamphlets, it is scarcely possible that the same should have also been made by another person and given to D. The coincidence in so many hundred cases would be remarkable.

I would, by way of illustration, state that as to the *Nord*, a newspaper printed at Brussels a part of the time, and in Paris the rest of the time, and from which D. in common with myself, has made citations between 1860 and 1863, after the most diligent inquiry, I cannot learn that any copy was taken in this section of the United States, except by myself, till July, 1864, when it was taken by the Boston Athenæum. No citation in D. is subsequent to 1863, nor is there any of a date later than my last edition from the Almanach de Gotha, or Annuaire des Deux Mondes, previous to which time the coincidences in our quotations from those works are very numerous. No continental elementary text writer since 1863 is mentioned by D. The names of Couchy, Gessner, Vergé, Otto Pradier Fodéiè, are not to be found in his book, nor are there any European diplomatic notes since my time noticed, except such as are connected with American affairs and to be found in the Diplomatic Correspondence published at Washington.

I should state that the index to the edition of 1855 was made exclusively by me, and that of 1863 by me with the aid of the Hon. E. R. Potter. His statements as to the index of D, I have, as in the case of the foot-notes, verified.

Not having confidence in my own judgment in a matter in which my feelings were intensely excited, and which involved a question of law, as well as of expediency, I went as soon as practicable, after obtaining a copy of D., to Saratoga, where Chancellor Walworth resides. I asked his opinion, to guide my action, as to the existence of a piratical invasion of my rights by the respondents, and of the appropriate means of protecting them. After a delay of a fortnight, during which, as he assured me, he had been constantly engaged in comparing the different editions of Wheaton, and having before him the memorandum of June 14, 1863, as well as Wheaton's edition of 1846, my two editions of 1855 and 1863, and Dana's edition, he sent me the opinion which is annexed, marked D. Since the receipt of that opinion, I have devoted my time almost exclusively to a careful examination of my books and of the respondents', fo. the preparation of the evidence in the case.

W. B. Lawrence

United States of America,
District of Mass. ss.

Subscribed and sworn to by the said W. B. Lawrence this twenty seventh day of October A. D. 1866.

Before me,

E. Merrick

U. S. Commissioner.

A. W. B. L.

Berlin, 10 July, 1844.

My Dear Lawrence,

I have now to thank you for your very kind & interesting letter of the 14 June.

My accounts from Washington represent the fate of the Treaty with the Zollverein as suspended between rejection, & laying on the table until the next Session. Should the latter course be adopted, we may be able to put *new life* into it. In any case I shall never be disposed to repudiate my share of responsibility for a measure honestly intended, & as I believe well adapted, to promote the best interests of the Country. I am very much obliged by the support you have given me on this occasion with your usual tact & discretion. I have not yet seen anything in the newspapers, since the publication of Horseman's stupid letters, which manifest the desire to connect my name & efforts in this business with any party purposes. I wish to be considered as acting as I really have acted, quite independent of any such objects. Should you at any time see anything of that sort worth noticing, I rely upon your taking care of me.

I am glad to hear that the publication of the Histy of the Law of Nations is going on so well under your auspices. I pray you to make

any alteration, or add any explanatory notes you may judge necessary. I should perhaps have done better to have *analysed*, rather than given *in extenso* those long documents about the Right of Search & Treaty of Washington. But American readers will be more tolerant of such *lengthy* papers than Europeans, & they may be of convenient reference, as manifestos of the opinions & purposes of our Gov't upon these matters. I hope you will find the means of sending (among others) Mr. Clay a copy. He has recently expressed himself in a very friendly manner towards me.

I lately wrote you requesting to know whether an arrangement could be made with Banks or any other publishing house, for a new Edition, (it will in fact be a *new work*) of the Elements of International Law. I would undertake to get it ready by the next Spring. It will make two goodly 8vo. vols.—But I shall expect to be well paid. The work is about being published in French & Spanish. I have desired a copy of the "*Histoire des Peuples du Nord*" to be sent you from Paris. I cannot, after all your kind aid, ask you to review it yourself — but only request you to see that it is reviewed in the N. American. I am sure Mr. Sparks would undertake it, if you send it to him. But if you are disposed to do it yourself, *tant mieux*.

I hear nothing about the Judgeship, but I have no reason to believe that Mr. Tyler has ever thought seriously of me for that place, or that he thinks I have any special qualifications for any thing but German affairs.

I have been much struck with your views of the Presidential game. The doctrine of moral probabilities must be carried to a higher degree of perfection than it has as yet attained, before it can be applied to such problems, the solution of which depends upon so many contingencies & disturbing forces. I pray you to let me hear from you as often as you can find time, on these matters.

Please to send me the Proof Sheets to the care of the Legation in London.

Remember me to C. King, tho' he is against my Treaty.

Ever truly yours,

H. W.

B. W. B. L.

Cambridge July 29th 1853.

My Dear Mr. Lawrence,

I hasten to reply to your kind note, and to assure you that nothing could give me greater satisfaction, than to believe that you would undertake the revision of the "International Law" with a "Memoir."

No man knew better, or was more esteemed by my lamented husband than yourself, and to no one would *we* so willingly trust this task with the full conviction that it would be done in a manner grateful to our feelings.

Of my husband's life in N. Y. you know more than any one perhaps, and of the high standing he long held there.

I have not received any proposal as to "price." We *think* Lea & Blanchard desire to purchase the "Copy-right" out-right, what do you think would be most for the interest of my children. We have consulted Mr. Dana & Mr. Parsons both are rather undecided, you from having more knowledge of the publishers &c. will be better able to judge. My daughters will be in Newport this week on a visit to their cousin Mrs. Philip Allen you will perhaps have an opportunity to speak with one of them on the subject more at large than I can write. Accept my heartfelt thanks for the kind expressions, and kind proposal. To one who has lost nearly all "that makes life dear" it is soothing to receive a proof that the departed are not quite forgotten.

With kind regards to Mrs. Lawrence,

Yours very truly,

C. WHEATON.

C. W. B. L.

Memorandum —

Mr. Lawrence will write to Mr. Brockhaus, in terms to bring to Mrs. Wheaton the right to draw on Mr. Brockhaus, at once for 6000. Francs —

He will also endeavor to get from Mr. Brockhaus, as. much as he can

towards the actual expense of having the translation into French, made here And so mueh. of that expense as. he fails to get. from. B. Mrs. Wheaton will pay, from. the proceeds. of the draft on Broekhaus. On the payment of her draft on B., Mrs. Wheaton will agree formally, to make no use of Mr. Lawrenee's notes, in a new edition without his written consent and Mrs. Wheaton will give to Mr. Lawrenee the right to make any use he wishes to of his own notes

M. B. WHEATON

June 14th 1863

Stamp Duty paid
John Sargent,
Collector of Internal Revenue,
Oet. 10th, 1866.
Penalty Remitted.

5 cents,
J. S.
Oct. 10.
1866.
Int. Re.

On the same sheet is the following:

Dear Miss Wheaton — Mr. Lawrenee & I have come to a perfectly amieable result, whieh is expressed generally in this memorandum

I will give you my reasons, if they do not oeeur to you, when we meet.

If this result be satisfaetory please make a copy for yourself of the memorandum.

Very sincerely y'rs

THEOPHILUS PARSONS

If eonvenient, take a copy also of Mr. Lawrence's letter to Mr. Brockhaus whieh seems to me entirely satisfactory.

D. W. B. L.

CASE AND OPINION.

OPINION OF CHANCELLOR WALWORTH.

Our distinguished fellow-citizen and eminent publicist, Henry Wheaton, LL.D., died in March 1848. During his long sojourn in Europe, as one of the diplomatic representatives of the United States, he compiled his first edition of the "Elements of International Law," which was published at Philadelphia and at London in 1836. The copyright of the Philadelphia edition expired in 1864, and was not renewed in the name of his widow or heirs.

In 1846 a new edition, with some additions and corrections was published in Philadelphia, and was attempted to be copyrighted there in the name of the author. But as Mr. Wheaton was not a resident of that District, that copyright was probably void; and gave no exclusive right to the author's additions and corrections. Mr. Wheaton's latest additions to his Elements of International Law were made in 1847, and were published in 1848, in French, at Paris and at Leipsic, in what has been called the fifth edition of his work.

In 1855, his long tried and devoted friend, William Beach Lawrence, who for a time had been one of his diplomatic colleagues in Europe, for the purpose of aiding the widow and children of the then deceased author of Wheaton's International Law, prepared a new edition thereof, called the sixth edition. In this edition the editor made many alterations in, or rather additions to, the text of former English editions of the work; most of which additions were the editor's own translations from Mr. Wheaton's additions in French, and published, for the first time, at Paris and at Leipsic in 1848. And he added very copious notes of his own, in reference to questions of international law, which had arisen since the publication of Mr. Wheaton's last edition, as well as to some that had arisen previously thereto. The editor's notes also contained

numerous references to published works of writers on the subject of international law, explaining, confirming, or elucidating the text of Mr. Wheaton's work, and also the notes of the editor of this sixth edition. And many original references to public documents, treaties, diplomatic correspondence, &c., were made by the editor, which added very considerably to the value of Mr. Wheaton's most excellent work.

This sixth edition was published at Boston in 1855, with the editor's English additions and notes; with nearly two hundred pages of introductory remarks, by the editor, containing a brief history of the life, character, literary productions, diplomatic achievements, &c., of the author of the original text of the work. The copyright of the whole of this edition was, with the assent of Mr. Lawrence, taken out in the name of Mrs. Catherine Wheaton, who was then the widow of the eminent publicist; one of whose daughters was the wife of Mr. Little of Boston, then and now a member of the firm of Little, Brown & Company, who were the publishers of that sixth edition. Mr. Lawrence afterwards prepared and edited a second annotated edition of Wheaton's Elements of International Law; including his notes to the sixth edition, with some slight corrections. To those notes very extensive new notes were added, not only in reference to the subject-matters discussed in the body of the work, but also in reference to many international questions which had arisen, and been discussed or acted upon, since the preparation of that sixth edition; particularly in reference to questions arising out of the civil war in the United States. Most of the "Introductory remarks" contained in the annotated edition of 1855, were either embraced in a re-written notice of Mr. Wheaton, by the editor, or were incorporated into the editor's notes to this last edition. It was published in 1863, at Boston, by Little, Brown & Company, and simultaneously at London, by Sampson Low, Son & Company. And the American copyright, as in the previous edition edited by Mr. Lawrence, was entered or taken out in the name of Catherine Wheaton, who was then living, but has since died.

As the second annotated edition was going through the press, the editor's notes, in connection with the text, were sent to Mr. Brockhaus, at Leipsic, who had published the French edition of 1848. And he offered Mr. Lawrence, as an *honorarium*, or voluntary and honorary allowance for the anticipated profits to be derived from the publication of a

French translation of those notes in connection with the work, the privilege of drawing on him for six thousand francs. Mr. Lawrence was anxious to obtain this *honorarium* for the benefit of Mrs. Wheaton and her unmarried daughter; but was not willing to have a French edition of his notes published unless he had the supervision of their translation. And as that translation, and the corrections of his notes, would require at least six months of his time and labor, and considerable pecuniary expense, he thought he ought, as an equivalent therefor, to have the exclusive right thereafter to use his own notes, as copyrighted, without any interference by any one, and that they should not thereafter be used by Mrs. Wheaton, or her representatives or assigns, without his consent. But upon those terms he was willing to give her the benefit of the offered *honorarium*, and to authorize her to draw for the same, by his giving to Mr. Brockhaus the assurance that he would furnish him with the desired French translation of his (Mr. Lawrence's) notes for publication. All this he communicated to Miss Martha B. Wheaton, the unmarried daughter, who was acting for her mother, as well as for her own benefit. It resulted in the following memorandum of the agreement or understanding of the parties, which memorandum was drawn up by Professor Parsons, of the Law School at Harvard College, as the friend of Mrs. Wheaton and her daughters, and was signed by Miss Martha B. Wheaton, who professed to act for her mother.

"Mr. Lawrence will write to Mr. Brockhaus in terms to bring to Mrs. Wheaton the right to draw on Mr. Brockhaus at once for six thousand francs. He will also endeavor to get from Mr. Brockhaus as much as he can towards the actual expense of having the translation into French made here. And so much of that expense as he fails to get of Mr. Brockhaus, Mrs. Wheaton will pay from the proceeds of the draft on Brockhaus.

"Mrs. Wheaton, on the payment of her draft on Brockhaus, agrees formally to make no use of Mr. Lawrence's notes in a new edition without his written consent. And Mrs. Wheaton will give to Mr. Lawrence the right to make any use he wishes to of his own notes.

"M. B. WHEATON.

"JUNE 14, 1863."

Simultaneously with the date of this written memorandum, Mr.

Lawrence, pursuant to the terms of the arrangement, wrote to Mr. Brockhaus, a letter of which the following is a copy:

Ochre Point, Newport,
June 14th, 1863.

Dear Sir, — I have made satisfactory arrangements with Mrs. Wheaton by which I relinquish to her all claim against the 6000 francs in your hands, she defraying the expenses of translation, if any, which you may not defray. I am very unwilling to have the translation made otherwise than under my own direction, and the alterations render my supervision necessary. The new matter which I shall insert, and the condensation of the old, would I trust, amply compensate you for the difference between the expense of translation in Europe, and here. I know not what it would cost there, but I think it might be effected here for 2,000 francs. At all events, if that is allowed, the difference, if any, will be made up on this side. There will be more pages than I supposed, but I propose to cover actual cost only.

"I sincerely desire that Mrs. Wheaton may be enabled to retain the whole of the 6,000 francs for which she is authorized to draw on that account. I will go to work immediately. Indeed I am already employed in correcting the notes, but I fear that I cannot promise you any part of the translation before six months. I go to Washington in a few days to examine the documents, which I cannot obtain elsewhere, and neither for that nor for any other expenses do I make any charge. I ought to repeat that you omit to notice that I shall expect twenty-five copies, including corresponding copies of the Elements, and if two editions are made, the same for each. Should any books appear which you deem important for me to use in connection with the work, it would be for your interest to forward them.

Should Mrs. Wheaton hear nothing from you to the contrary before the tenth of August, she proposes to draw on that day.

Yours truly,

W. B. LAWRENCE."

Mr. F. A. Brockhaus.

This letter was delivered to Professor Parsons at the time he conducted the arrangement, on behalf of Mrs. Wheaton and her daughter with Mr. Lawrence. And he sent it to Miss Martha B. Wheaton, when

he transmitted to her the memorandum of the arrangement he had made to be signed by her. These were accompanied by the following note from him:

"Dear Miss Wheaton: Mr. Lawrence and I have come to a perfectly amicable result, which is expressed generally in this memorandum. I will give my reasons, if they do not occur to you, when we meet. If this result be satisfactory, please make a copy for yourself of the memorandum.

Very sincerely yours,

THEOPHILUS PARSONS."

"If convenient take a copy also of Mr. Lawrence's letter to Mr. Brockhaus, which seems to me entirely satisfactory."

Upon the receipt of the memorandum and letter, by Miss Wheaton, she signed the former, and caused it to be delivered to Mr. Lawrence. The letter was transmitted to Mr. Brockhaus at Leipsic. And Miss Wheaton was thereby enabled to obtain for her mother, by means of the draft upon him, the proceeds of the 6,000 francs, equal in value here to about $1,800 in the paper currency of the United States in August 1863.

Mrs. Wheaton afterwards died, and Miss Martha B. Wheaton, the unmarried daughter, became her personal representative. Since the death of the mother, Miss Martha B. Wheaton, in conjuction with R. H. Dana, junior, and her brother-in-law Little, and his co-partners, composing the firm of Little, Brown & Co., have edited and published what is called the eighth edition of Elements of International Law, by Henry Wheaton, LL.D. &c., edited, with notes, by Richard Henry Dana, Jr., LL.D. Published at Boston, 1866, by Little, Brown & Co. And the copyright for the same is entered in the Office of the Clerk of the District Court of the United States, for the District of Massachusetts, in the name of Martha B. Wheaton.

In this edition parts of many of the notes of Mr. Lawrence, embraced in, and published with, one or both of his annotated editions of Wheaton's Elements of International Law, are embraced and published, with more or less alterations of the language. And some of Mr. Lawrence's notes are published entire, in that eighth edition; with no alteration of the language of the original notes as used by him. In many cases the

authorities collected, and cited or referred to, by him; and the public and private documents and letters and documentary evidence collected and referred to by him, are referred to or published in the same connection with the text, in this eighth edition. All this is contrary to the spirit and intent of the arrangement made with Mr. Lawrence, in June 1863. And my opinion is now desired by Mr. Lawrence upon these two questions in relation to this subject.

First. Under the arrangement of the 14th of June 1863, is Mr. Lawrence equitably entitled, as against Miss Wheaton, as representative of her mother, or otherwise, and as against the editor and the publishers of this edition, to an injunction to restrain her and them from thus using his copyrighted notes without his consent?

Second. Was such use of his notes and of the citations and authorities which he had collected and had permitted to be so published by Mrs. Wheaton, a violation of his equitable copyright, under the arrangement of the 14th of June 1863?

OPINION.

1. It may be assumed, in the examination of the first question, that Mr. Lawrence, by allowing Wheaton's Elements of International Law, with the editor's own annotations, to be published by Mrs. Wheaton, and copyrighted in her name, made her the proprietor of the whole work, including the editor's notes. Such appears to have been the tacit understanding or agreement of the parties; although there was no written assignment of the right or interest in Mr. Lawrence's notes to Mrs. Wheaton.

I understand, from the published letter of Mr. Lawrence to Professor Parsons, of the 6th of January 1866, that the editor of the first and second annotated editions of the Elements of International Law, had from the beginning intended to bestow gratuitously, all his labor of preparing those two editions for the press, including his own elaborate and very valuable notes, for the benefit, pecuniarily, of the widow of his friend, the deceased author of the text of the work.

Under the English Copyright Acts it appears to be settled, whether rightfully or not it is unnecessary for me to express an opinion, that to entitle an assignee of an author to acquire the legal title to a copyright, the assignment to him must be in writing, (*Power* vs. *Walker*, 3

Maule and Sel. Rep. 7. *Clements* vs. *Walker*, 2 *Barn. and Cress. Rep.* 861.) The decisions on this subject in England appear to be based upon the peculiar provisions of their Statutes.

I have not been able to find anything in the existing Statutes of the United States, relative to copyright, requiring the transfer from the author of a literary production to be in writing, to enable his assignee to copyright the work in his own name as proprietor. The first section of the Act of the 3d of February 1831, entitled an act to amend the several acts respecting copyrights, *(Dunlop's Dig. of Laws of the U. S.* 794,*)* simply declares that any person or persons being a citizen or citizens of the United States, or resident therein, who shall be the author or authors of any book or books, &c., and the executors, administrators, *or legal assigns* of such person or persons shall have the sole right and liberty of printing, reprinting, publishing, and vending, such book or books, &c., in whole or in part, for the term of twenty-eight years from the time of recording the title thereof in the manner in that act directed. The fourth section then provides that no person shall be entitled to the benefit of that Act, unless he shall before publication, deposit a printed copy of the title of such book or books, &c., in the Clerk's Office of the District Court of the District, wherein the author *or proprietor* shall reside. And the clerk, in recording the same, is to state the name of the author *or proprietor*, so depositing such title page, and the date of such deposit, stating that the person so depositing the title claims to be *the author* or to be *the proprietor* of the book, &c., as the case may be. No evidence of authorship or proprietorship is required to be exhibited to the clerk with the title page of the book, &c., by the person by whom, or in whose behalf it is deposited. All that he is required to do is to inform the clerk whether the person claiming the copyright desires it as the *author* of the book or as the proprietor thereof merely.

It is true the supplementary act of the 30th of June 1834, authorizes deeds or instruments in writing, for the transfer or assignment of copyrights to be acknowledged, proved, and to be recorded in the office where the *original copyright* is deposited and recorded. And if not so recorded within sixty days after their execution, they are void as against subsequent bona fide purchasers or mortgagees of the copyright for

valuable consideration and without notice. *(Dunl. Dig. of Laws of U. S. p.* 847.*)*

But this statute only applies to an assignment after the book or other work has been properly copyrighted. Not to an assignment or transfer by the author, either verbally, or in writing, or impliedly, upon which assignment or transfer the assignee has the privilege of copyrighting the work, being the *proprietor* thereof. *(See also Webb* v. *Powers; Woodbury & Minot's Reports,* 497.*)*

I conclude, therefore, that at the time of the arrangement of the 14th of June 1863, Mr. Lawrence's notes had been legally copyrighted in the name of Mrs. Catherine Wheaton, as the rightful *proprietor* thereof, by the spontaneous bounty of their author and compiler. And that the right of protecting those notes from piracy had not been lost by the author's consent to their publication by her as the rightful proprietor of his bounty.

That being the case, I think the arrangement of the fourteenth of June, 1833, restored to Mr. Lawrence, in equity, the proprietorship of the copyrighted notes, and gave to him equitably all the rights contemplated by that arrangement. And as Miss Martha B. Wheaton assumed to act for her mother in making that arrangement, and has received for herself and for her mother, the full pecuniary benefit thereof, she and those claiming under her are in equity estopped from alleging that she was not authorized to make such an arrangement for her mother.

And if the publication of this eighth edition of The Elements of International Law, which is copy-righted and published in her name, as the proprietor thereof, is in fact a violation of the arrangement made by her with Mr. Lawrence, he has in equity the right to restrain the publication and sale of this eighth edition, and to an account of the profits received from the sales already made.

An equitable assignment or the assignment of the legal interest of assignor in a copy-righted work, though not recorded according to the act of June 1834, is valid as between the parties, and as against all but bona fide purchasers, and mortgages for valuable consideration, and without notice. (Webb *vs.* Powers, 2 Woodbury & Minot's Rep. 497.) And in the case under consideration, Dana the editor, and at least one of the firm of Little, Brown & Co., at the time they published this

eighth edition, had actual notice, or at least sufficient to put them on inquiry, as to the equitable right of Mr. Lawrence to his copy-righted notes, under the arrangements of June 1863. And if any parts of those notes have been pirated by Mr. Dana in preparing and editing this eighth edition of the Elements of International Law, it is the right and duty of the proper court to restrain the further publication and sale of such pirated parts. Mr. Lawrence as against Miss Wheaton as the representative of her mother, is also entitled to a specific performance of the arrangement of June 1863, by the execution of a formal assignment in conformity with that arrangement. So that he may have such formal assignment recorded according to the provisions of the act of June 1834, to enable him to protect his rights as against subsequent *bouâ fide* purchasers and mortgagees of the copyrights to his notes. *(See* 11 *Simons Rep.* 572, *and* 7 *English Law and Equity Rep.* 331.*)*

2. What use is allowed to be made of a copyrighted publication, without subjecting the parties using it to a charge of literary piracy, is frequently a question of much difficulty. And where the alleged pirate pretends that he has not used the copyrighted work in preparing his book, an ordinary and familiar mode of contradicting such pretensions is to show that he has stolen even the errors of the copyrighted work. *(See Murray* vs. *Bogue,* 17 *Eng. Law and Equity Rep.* 172.*)* In the present case, it will be found that Mr. Dana, in preparing this eighth edition, has copied into, or transferred to it, several errors which had crept into Mr. Lawrence's notes.

Throughout this edition it will also be found that many of Mr. Lawrence's notes have been used, in substance, by the editor, though he has attempted, in most of those cases, to cover the piracy by carefully changing the language of Mr. Lawrence's notes. In several cases, however, he has servilely copied the very language of the note. And in other cases he has used the citations of authorities which the industry and research of Mr. Lawrence had collected and referred to in the notes. Probably he has examined some of the books referred to by Mr. Lawrence. But he has copied some of Mr. Lawrence's references to letters and documents, which letters and documents had never been published, nor been referred to except in Mr. Lawrence's copyrighted notes.

Again he has for the most part in his notes pirated the plan, order or arrangement, in which Mr. Lawrence has connected the subject matters of those notes, respectively, with the text of Wheaton's Elements of International Law. Judge Story in the case of *Emerson* vs. *Davies* (3 *Story's Rep.* 768) says, "Every author of a book has a copyright in the plan, arrangement and combination of his materials, and in his mode of illustrating the subject, if it be new and original in its substance." And as the copyright of the Elements of International Law had run out when this Eighth Edition thereof was published, much of the value of Mr. Lawrence's notes as a copyrighted work, was in their connection with the text of the Elements and the right he then had and now has to use his notes, and the several subject-matters thereof, in connection with the text of the Elements, and according to his plan or arrangements in his two annotated editions.

For these and other reasons which I have not leisure to state at length, my opinion is that the publication of this eighth edition of Wheaton's Elements of International Law, in connection with the notes, and the several subject matters of those notes, was an unjustifiable violation of Mr. Lawrence's equitable rights under the arrangement of the 14th of June 1863.

REUBEN H. WALWORTH.

Pine Grove, Saratoga Springs,
August 29th, 1863.

Circuit Court of the United States.

DISTRICT OF MASSACHUSETTS, SS.

IN EQUITY.

WILLIAM B. LAWRENCE

vs.

RICHARD H. DANA, JR., ET ALS.

AFFIDAVIT OF ELISHA R. POTTER.

My name is Elisha R. Potter; am of lawful age; my residence is South Kingstown, R. I. I am a counsellor at law.

I have always been in the habit of reading and using books a great deal, both professional and other books. I have given a good deal of attention to the subject of International Law, and the literature in various languages connected with that subject. I am familiar with most of the treatises upon that subject, and with most of the collections of treaties, diplomatic papers, diplomatic histories, Annuaires, &c.; that is to say, I have used and referred to them sufficiently to acquire, and I have acquired a general bibliographical knowledge of them, of their general plan and arrangement, and of the nature of their contents.

I have known the complainant since 1852. It is within my knowledge that ever since I have known him he has devoted most of his time and attention to the subject of International Law, and among other things has devoted a great deal of time and attention to collecting all the authorities bearing upon questions of International Law, and par-

ticularly to ascertaining all the cases that have arisen in history, involving these questions, the circumstances under which they have arisen, been discussed, and been determined, the negotiations and discussions of diplomatists, statesmen, publicists and jurists, and to procuring the books and papers giving all those matters in the original and official form. It is within my knowledge that he has made great exertions for that purpose, both in the way of inquiries from persons likely to be informed upon some of the points to be ascertained, by searching the archives of the State Department, and by procuring in this country and abroad many rare or uncommon books useful for that purpose. He has collected a library of upwards of 5,000 volumes of the literature of this subject. This is, I believe, by far the largest and most perfect collection in America. Both his library and his knowledge of the facts of the nature above referred to, and of the literature of the subject are very constantly called into requisition by gentlemen in public and professional life.

I have been familiar with the complainant's books for many years. I have recently made a careful examination of the book described in the bill as published by the defendants.

Annotations to a book like Wheaton's Elements may be of various kinds. They may be mere citations of authorities supporting the precise position of the text. In such cases it is generally sufficient to give the *citations* alone. They may be to qualify or contradict the position in the text; in that case it is necessary to mention their nature, or to state the substance of them. They may be to state facts, discussions, or decisions which have arisen since the text was prepared; these should state those facts, discussions and decisions, or the substance of them. They may be to state valuable or interesting facts not referred to or noticed in the text; in this case it is essential that the substance at least should be stated, as a mere *citation* would lead the reader to suppose that the authority related to the matter given in the text.

Every lawyer knows how much of the value of a book depends upon the accuracy with which it quotes, or gives the substance of the authorities referred to. This is very much more important with regard to references to books which are uncommon and practically inaccessible. In many cases nothing will supersede a recurrence to the original but a direct *quotation* of its words.

The complainant's books contain, I believe, more citations of all kinds than had been collected in any one book published before his books were published. His edition of 1855 preceded Phillimore, who frequently refers to it. His edition of 1863 is particularly rich in giving very full statements of the historical facts, treaties, &c., bearing upon or illustrating the different topics, and in quoting the text of the official documents, despatches, treaties, &c. In this respect it far surpasses all books which had preceded it, (except Phillimore, and perhaps even that,) and all which have followed it. This is well understood to be an exceedingly valuable and distinctive feature of the book, because it presents in a convenient form all these matters, not collected anywhere else, many of them not being stated in any previous treatise, and many of the papers, the text of which is given, not being found in any published books, or only in books which are uncommon and inaccessible to most persons who have occasion to use them. A considerable portion of the matters in these notes of the complainant's books are taken from newspapers and other ephemeral publications of the day, and to the best of my knowledge and belief are not to be found in any book except the complainant's book, and some others which have been published since, and have quoted them and cited them from the complainant's book.

The notes in complainant's book are chiefly occupied with stating the remarks of other writers, and the historical facts and discussions of the nature I have referred to, and with citations of authorities.

A very considerable portion of defendants' notes comprise matters of the same nature as those above stated to be in Mr. Lawrence's annotations.

I now proceed to state instances of identity or similarity which I have noticed in the complainant's book and the book described in the bill as the defendant's book. For convenience I will indicate the the complainant's book of 1863 by the letter L., and the book purporting to be published by the defendants by the letter D. The references in both are to the pages. I intend to use the word "citation" to indicate that the name of the book is given, and the word "quotation" to indicate that an extract in the words of the original is given. In preparing this affidavit I have made use of Mr. Lawrence's li

brary, and I have verified all the facts and citations and quotations which I have had occasion to verify.

One kind of instances of identity or similarity relates to the use in D. of the same facts, authorities and illustrations that are found in L., in such a way that the note in D. could have been written by the use of L. alone, and without recurrence to any originals, and without any original independent investigation of the subject.

Another kind consists in this, that in L.'s notes the editor has not inserted all the quotations and citations that might have been inserted, but has exercised judgment in the selection of some and the omission of others, and that many of the books from which he has most frequently cited, such as annuaires, periodicals, &c., and some prominent treatises have been continued and much added to since L. was published in 1863. That, with comparatively few exceptions, the editor of D. has not made any citations or quotations not to be found in L., though the nature of the materials and their relations to the subject is such that I am confident that a second person who should independently investigate the subject by the use of the originals, would find and would select many things not selected by the first investigator; that with regard to all such books, with a few trifling exceptions, D. has many citations and quotations which can be found in L., and for which L.'s notes would suffice, and has few citations or quotations of such books subsequent in time to L., and which would require an independent examination of the original books, and which from the nature of the subject would result from such an examination.

There are other instances of identity such as would naturally arise if the compiler of the notes in D. wrote with L. before him, using the notes in L. as the material for his work, copying, abstracting, condensing such portions as he saw fit to take, inserting in his notes quotations from and citations of other authors cited in L. without looking at the originals to ascertain when L. uses the language of the original and when he uses his own; and endeavoring, in citing authors, to shorten by leaving out parts of the title given in L. without being aware what parts of the title are necessary in order to identify the book.

I will not refer at length to the "text" of the two books, as I understand that that matter is embraced in the complainant's affidavit; I

will mention however, that D. preface, p. 1, states that "this edition contains nothing but the text of Mr. Wheaton according to his last revision, his notes and the original matter contributed by the editor," and p. xi. states that "the notes of Mr. Lawrence do not form any part of this edition."

D. note 244, p. 703, is a note to state that in the opinion of the editor there is a wrong reading of the text, and that it ought to be printed so as to bear the meaning which he mentions in the note. In the edition of 1846, p. 560, which contains the text of Mr. Wheaton, according to his last revision, there is a comma, the use of which gives to this passage the meaning mentioned in the note of D. This comma is omitted both in L. and D. A recurrence to Mr. Wheaton's "last revision" would have obviated the necessity for this ingenious note in D.

That portion of text found in D., pp. 146-7 is found in L., 177. In the last edition by Mr. Wheaton in 1846, there were four notes by him attached to this portion of the text. These notes are omitted in L (though their omission is noted in the "errata.") They are also omitted in D.

There is a similar omission on p. 173 of L., and p. 142 of D., of a note found on p. 133 of Wheaton's ed. of 1846 and noted in errata to L.

D. p. 417 cites *U. S.* v. *Guillem, xi. Howard* as a part of Mr. Wheaton's note. It is not to be found in Wheaton's note in his edition of 1846, (p. 383,) but is to be found in *Mr. Lawrence's* note to the same word in L., p. 572. It was decided after Mr. Wheaton's death.

In the course of my examinations I have found in the complainant's book a certain number of typographical and clerical errors, and typographical and clerical peculiarities in the manner of quoting and citing matters which he has quoted and cited. These errors and peculiarities I have found in the defendant's book exactly as they are in the complainant's book, in the respective corresponding notes. These matters are exhibited in the following schedule: —

Annual Register 1779, p. 249, is cited in L. 41, D. 38, and D. 43. The page which is referred to is page 429.

The Queen's speech of Feb. 1862, is quoted in L. 156, D. 127. — Each prints the phrase "*various* foreigners." The speech is given in Annual Register 1862, p. 5, and does not contain that word "*various*."

L. 918, and D. 143, *quote* the same words from a letter of Mr. Cass to Mr. Wright of *July* 8, 1859. Towards the close of the same note, which is quite long in both, L. 926, D. 144, there is a passage *quoted* from a letter of Mr. Cass to Mr. Wright of *July* 9, 1859, that date being given by both. In Senate Doc. 38, the authority referred to, there is no letter of Cass to Wright dated *July* 9, 1859, and there is one dated *July* 8, 1859, which contains both passages quoted as above. See p. 135 of that Doc.

A quotation from Stephen's Blackstone is given in L. 181, D. 151. The quotations are identical in both. Both omit a few words from Stephens, and both put a comma after the word *valid*, there being none in Stephens.

L. 219, quotes a passage from "Rush's Memoranda of a Residence in London," p. 432. D. 177 refers to "Rush's Residence in London," p. 432. The matter quoted and cited by both is found on page 445, and the chapter treating of the subject referred to begins on page 416 of the book cited by Mr. Lawrence.

The Swiss Circular of *April* 9, is cited by L. 706; D. 514 — both citing Almanach de Gotha, 1861, as authority. Upon reference to p. [60] of that book, it is found that the *true* date is April 11.

A passage from the Berlin Decree is quoted in L. 820, D. 673, with marks of quotation. The quotation in both is in English, and the reference in both is to the vol. and page of Martens, where the original French text is found. The translation is identical in both. The translations given in New Annual Reg. 1806, xxviii. [241] and Wait's Am. State Papers, 1808–10, vol. 7, p. 163, and in Ann. Register, 1806, Rivington ed. new series 567,* differ very materially from each other, and from the translation in the notes of L. and D.

The title of the French official newspaper is "Le Moniteur Universel." The word "Paris" does not appear anywhere on the title. It is not given with the date of the paper. The following schedule exhibits the citations in D., and the corresponding ones in L. It will be seen that they agree, not only in peculiarities of name, but in the manner of expressing the dates, and that where the day is not stated in L. it is not stated in D.

L.	D.
L. 533, "Paris Moniteur, March 28, 1854."	D. 389, "Paris Moniteur, March 28, 1854."
p. 634, "Paris Moniteur, 9th June, 1854."	p. 454. "Paris Moniteur, 9th, June. 1854."
p. 833, "Moniteur Universel," — not giving the date, but quoting from it a French official paper of "September 1861."	p. 674. "Moniteur Universel, Sept. 1861."

Dr. Twiss' book is always cited in L. as "vol. I." It is invariably cited in the same way in D. In this respect they both differ from the title of the book. See post, where I have again alluded to this.

The following occurs with reference to mediation in the affairs of Portugal in 1847:

L.	D.
L. p. 140. "The Queen having accepted the offer of the British Government to mediate and agreed to open a negotiation with the insurgents on terms which they refused to accept, the British government determined, with the assent of Spain and France, to interfere with force. A protocol was previously agreed on by the plenipotentiaries of the four powers, offering to the Junta, in the Queen's name, certain conditions, which were not, however, accepted by the rebels till after some naval demonstrations on the part of England and Spain. Annual Register, 1847, p. 346]."	D. p. 121. All that is said in this note upon this subject is — "The offer of Great Britain in 1847, to mediate between the Queen of Portugal and the insurgents, was accepted by the Queen, but the terms suggested by the four powers were rejected by the Junta, and the end was a compulsory demonstration on the part of England, France and Spain. Annual Register, 1847, p. 346."

It will be observed that the *first* part of the sentence in D. corresponds with the *first* part in L. — That the statement that the terms offered by the "four powers" were refused, is intelligible in L. because the note

has previously mentioned four powers, namely, the Queen, England, France and Spain. That the same statement is found in D., but in there *unintelligible,* because he has only mentioned *two* powers, — the Queen and England.

The notes differ in this, that D. states that France made compulsory demonstrations. Ann. Register, at the place cited, shows that no French forces were employed.

I have noticed another instance of a matter found in the corresponding notes of L. and D. and entirely unintelligible or meaningless without a previous statement found in the note in L. but not found in D.

L. 873. This note states, with considerable detail, the provisions and effect of the French Constitution of 1852, with regard to the power of the Emperor to make treaties, citing Annuaire and Tripier. It then states that the Commercial Treaty of 1860 provided in article 20, that it should not be valid unless the English Parliament should pass the necessary Tariff laws, and cites Ann. Reg. 1860, p. 227.

The citation is erroneous. The article referred to, and the only one, which can have any bearing on the subject of the note, is on page 229.

It will be seen that this citation serves to illustrate the *British* Constitution, and its use can only be learned from the extract given in the note.

D. 712. This note states the provisions and effect of the French Constitution of 1852, with regard to the power of the Emperor to make treaties, citing Annuaire des Deux Mondes, and Tripier, where the old and the new Constitutions are given and the change pointed out.

It also cites the Ann. Reg. 1860, p. 227.

That citation shows only some of the details of the tariff of the French and English Commercial Treaty. It contains no authority for any of the statements in the note.

The error in the page of the citation is found also in D., but p. 229 is no authority for any of the statements made in *his* note.

There is a pamphlet on naturalization by "M. Ch. Beudant," which I have before me.

L. p. 900 cites.
"De Beaudant."

D. p. 145 cites.
"De Beandant."

These are corresponding notes.

Both quote a dozen lines from an article in the Quarterly Review, as follows: —

D. p. 217.
"'exercised by our naval officers.' The writer adds 'But we do not undertake,'" &c.

D. p. 176.
"'exercised by our naval officers . . . . . But we do not undertake to justify, &c.'"

In the original, which I have before me, the two sentences separated in D by points to indicate an omission are continuous, there being nothing between them.

D note 112, p. 266, seems made from L. note 110, p. 335.

Savigny wrote a book in German, the title of which, given in Mohl, Vol. I, p. 443, is "*System des röm. Rechtes.*" The full title is given in Wheaton's note, D. 22. I find this citation from it:

L. p. 288, quotes from the French translation, citing "Savigny, Droit Romain, par Guenoux, Tom. VIII. Ch. 1, Sec. 373, p. 270."

I find it on the page cited.

D. p. 224, corresponding note, cites from the German work as follows: "Savigny System, Liv. VIII. 270."

I have not been able to refer to the German edition to see if this matter is on p. 270 of that work, but I do not conceive it possible that the paging of the German and of the French translation should be the same. The work is divided, not into eight books (*liv.*) but only into three.

A quotation from Dr. Twiss, L. p. 416, is taken part from the text and part from the note of Twiss. L. gives the whole as one paragraph, citing it as if the whole was from the text. Exactly the same matter is quoted in exactly the same way at D. p. 319.

Again, in L. p. 268, in a quotation from Dr. Twiss' Cagliari opinion one whole line of the original is omitted, and the omission (which does not affect the sense) is not noticed in any way. Exactly the same quotation, with the same omission, is given in the same way in D. p. 260.

The original, which I have before me, has a comma after the word "*violated.*" This is omitted in L. and is also omitted in D.

I have made an examination of some portion of the Indices in the two books. I find that many of the titles are the same in both, and

that in a great many cases the matter under each title is printed exactly the same, word for word, in both. I have also noticed the following:

L. p. 1062. "*Habeas Corpus.* (See Martial Law.)" This title, occupying 7 lines, is found on p. 1071.	D. p. 735. "*Habeas Corpus.* (See Martial Law.") There is no such title in D.'s Index.
L. p. 1058. *Fecial* College 3, 687," and on page 687 there is a reference to it.	D. p. 734. "*Fecial* College, 687." On p. 687 of D. there is nothing about the Fecial College.
L. p. 1060. *Germanic Confederation.*	D. p. 734. *Germanic Confederation.* The first ten and one half lines are exactly the same as in L. except the pages.
L. 1041. "*Atalanta*, case of the, 64. There is a note upon this subject in L.	D. p. 726. "*Atalanta*, case of the, 64. It is not there.
L. p. 1068. "*Leibnitz*, p. 17," cited by Wheaton, and quoted by Mr. L. on p. 17.	D. p. 737. "*Leibnitz*, p. 17;" not mentioned on this page.

I have found in my examination that Mr. Lawrence is very accurate in citing the titles of books, in such a way as to identify the particular volume used. I have found in a great many cases that the title given by Mr. Dana does not identify any volume, or that it identifies the wrong volume and book. I have been enabled in such cases to ascertain what volume or book is intended, by a reference to the corresponding notes of complainant's book, where the volume containing the matter referred to in the defendants' notes is stated, and generally by referring to the volume itself. I have also found that Mr. Lawrence, where he does not professedly quote *verbatim* from original documents, has generally used the original phraseology and technical expressions. I find that where Mr. Dana's notes contain the substance of the matter so given by Mr. Lawrence, the phraseology is in many instances changed, so that D. does not give the correct phraseology. The phraseology of the defendants' notes in the above respect frequently is so different from that of the original document, as to bear a totally different meaning.

These instances are of such a nature that it would be very unnatural

for any one, and almost impossible for any person who was accurate, or who was conversant with the subject, and the literature relating to it, to make them, if he wrote with the original books quoted in these notes on the table before him.

The following Schedule will exhibit the instances referred to:

There are several editions of Lord Mahon's History of England. The London edition of 1836–54, the Leipsic edition of 1853–4, and the edition with Little & Brown's imprint, of 1853–4, differ from each other in the paging.

L. 396, cites "Lord Mahon's Hist. of Eng. i. 388, 484, London edition of 1836. This citation is correct. (A perusal of this note would suggest the name "Stanhope;" it is there mentioned.)	D. 301, cites "Lord Stanhope's Hist. of England, i. 388, 484," not stating the edition. The matter cited is not on those pages of either the Leipsic or L. & B.'s edition. The former has only 426, and the latter only 366 pages in Vol. I. I never saw the book cited as "Lord Stanhope's." He did not succeed to that title until 1855, after all these editions were published. See Dod's Peerage, 1860, p. 522.
L. 745. "Lord Mahon's History of England, Vol. VII. p. 46. Leipsic edition of 1854."	D. 585. "Lord Mahon's History of England, VII. 46," not stating the edition. The matter is not on page 46 of L. & B.'s edition.

There is an edition of Hautefeuille of 1848, and another of 1858 the paging being entirely different:

L. 798, cites "Tom. II. 412; Tom. II, 84, 101, 154, 2me ed." These citations are correct, referring the first one to the edition of 1848, and the others to the second edition of 1858. L.'s note to ed. of Wheaton of 1855 contains the first citation; the others were added to ed. of 1863, from H.'s second edition, both of which are in L.'s library.	D. 631, "Tom. II, p. 84, 101, 154, 412." These citations are not correct, if all are referred to *one* edition.

L. 350. "An act of navigation was concluded . . . in pursuance of the 17th article of the treaty, on the 7th of Nov. 1857."

D. 277. "See also art. 17 of treaty of 1857."

Both D. and L. cite the same volumes of Martens: from these, as well as from L.'s note, it appears that the Act of Navigation was a mere police regulation, established Nov. 7, 1857, by Commissioners appointed for that purpose under art. 17 of treaty of 1856.

L. p. 23. "Great Powers declare the Sublime Porte admitted to participate, &c."

This is the phraseology of the original treaty. See Martens, cited by L. See Ann. Reg. 1856, 313.

D. p. 22. "Great Powers invited the Sultan to participate."

D. gives no authority for this statement.

L. 980. "Lord Russell to the diplomatic representative of England," citing Le Nord, 30th Oct. 1862.

The despatch given in Le Nord is addressed to "James S. Lumley, Esquire."

D. 56. Lord Russell to the "English Ambassador"—cites no authority.

Mr. Lumley was not Ambassador, but Sec. of Embassy.

L. 75. "*Council of State for the Kingdom of Poland* was re-established."

This is a literal translation of the phrase of the original given in Le Nord, 6th April, 1861, cited by L.

D. 64. "*Diet of Poland* was re-established;" citing no authority in which this fact is stated.

The distinction between the Diet and the Council of State is well known to all persons conversant with this subject.

L. 165. Quotes from Westlake and Tripier as to a French law, which L. says refers to "real property or rights susceptible of hypothecation."

A reference to either Westlake or Tripier shows that the law refers to real property and rights in and to the same; that it does not refer to personal property; and that corporeal personal property is not susceptible of hypothecation, unless in some way attached to or connected with real estate.

D. 137, says that the French law refers to "real property and corporeal personal property," and cites, in this connection, Westlake.

L. 390, upon the same subject, quotes remarks of P. F. in a note to P. F.'s ed. of Martens, which he cites, and where the matter is found.

D. 298, cites "Pinheiro-Ferreira tit. Passports."

M. Fœlix conducted a French periodical called "Revue Etrangère et Française," to which Mr. Wheaton was a contributor. The tenth and last volume of this was published in 1843. This was succeeded by the "Revue du Droit Français et Etranger," volume 1 of which was published in 1844, under the same direction. In D. no distinction is made, and the volumes of the first are cited under the name of the second, and *vice versâ*. For errors. in this respect, in citing articles written by Mr. Wheaton, see D. p. 153, and p. 166. I have compared L. in all his citations with the *Revue*, which I found in his library.

The largest collections of treaties, and those chiefly used and cited, are the different series of books with which the name of Martens is connected. This consists of Martens' *Récueil* of 8 volumes, Supplement to Martens' Récueil, 4 vols., numbered and cited Supplement, vols. 1, 2, 3, 4. This extends to 1808. Martens' *Nouveau Récueil*, by various editors, in 16 vols., numbered vols. 1–16, and reaching to 1839. Some of these are in two parts, each of which is separate, and two of which are paged as a separate book, making 20 books. Martens' *Nouveau Récueil général, par Murhard*, 13 vols., numbered 1–13, coming down to 1849. *Nouveaux Supplemens, par Murhard*, 3 vols. *Nouveau Récueil général, par Samwer*, to the present time, numbered and cited vol. 14, *et seq.*

Thus, in order to identify the volume to be cited, it must be stated whether it is *Récueil*, or *Supplement*, or *Nouveau Récueil*, or *Nouveau Récueil général*, or *Nouveau Supplement*, or which "part" of certain volumes, or the name of the editor must be given,—and this distinction is invariably made by Mr. Wheaton, by Mr. Lawrence, and by all the modern writers, I believe, except in the respondents' book.

These collections are cited a number of times by D., as authority for various matters. Every one of those matters are to be found in the corresponding notes of L., where the citations are correct, distinguishing between the series and the different "parts," where there are two parts for the same year.

The citations given below are right in L. and wrong in D. I use abbreviations for convenience.

L.		D.	
133	M. par Samwer.	121	M. N. R.
244	" " " XVI. part 2.	191	" " XVI.
335	M. par S. XVI. part 2.	266	" Martens," XVI.
350	" " "	277	M. N. R.
350	" " " XVI. part 2.	277	" " XVII.
767	" " Murhard. III.	607	M. R.
820	" N. R. Tom. 1, p. 439.	673	"Martens," Tom. 1, p. 439.

With regard to the citation D 673, it is impossible to tell, from the name, whether D refers to some series of the Récueil, or to some of the works on International Law, written by Martens.

There are two books by Ch. de Martens, *Causes Célèbres* and *Nouvelles Causes Célèbres*, the volumes of which are numbered separately, but sometimes found numbered on the back as if one set. This distinction is not made in D. See for errors D. pp. 38, 42.

Hansard's Debates consists of three series, the volumes of which are numbered separately. This distinction, observed by Wheaton, L. and others, is not noticed in D.

Hansard is cited twelve times in D., neither mentioning year nor series, except that in one case it mentions the year. The citations in D, pp. 121, 145, 145, 191, 611, 612, should be *third series.*

The "*Annuaire des Deux Mondes*" begins in 1850, and the volume of that year is entitled "1850." The next volume is entitled "1851–2," and so are all the others, except the volumes for 1860 and 1861, which resemble, in this respect, the first volume. These are cited as they are entitled except in D, where they are cited sometimes one way and sometimes another. See for citations wrong in this respect D. pp. 56, 72, 510. In some of them there are two sets of paging, distinguished by Roman and Arabic numerals. For an error of this sort see D. 56. This manner of citing by double years is observed with regard to the more familiar works. See Cong. Globe, cited on D. p. 339, "1853–4,' "1855–6."

The volumes of the Annual Register are generally divided into two portions, paged separately, the distinction being indicated by a bracket attached to the number of the page; thus, p. 5, p. 5], and sometimes by stars, thus, 5*.

This distinction is never observed in D. See for citations where the bracket should be used D. p. 77, (six instances on this page), p. 120, (two instances), p. 144, (two instances), p. 454, p. 266, p. 43, (two instances).

There were two books written by Stapleton. One is "Political Life of Canning," in three volumes, and the other is "George Canning and his Times," in one volume. With reference to the recognition of Greece and the South American Republics, and the Monroe Doctrine, the citations are:

L. 978. "Stapleton, Canning and his Times, p. 476."	D. 39. "Stapleton's Life of Canning, 476."
"Canning and his Times, p. 399."	"Canning's Life, 399."
P. 990. "Stapleton, Canning and his Times."	P. 112. "Stapleton's Life of Canning."

In some of the volumes of the Almanach de Gotha, there are two series of paging in different parts of the book. This is observed in L. but not in D. See D. pp. 356, 514. L. pp. 480, 706.

Mr. Rush has published two books. They are "Memoranda of a Residence in London," 1st ed., 2nd ed., both Phil., 1833. (A London edition of this was published the same year under the title of "Narrative, &c.") "A Residence at the Court of London." London, 1845, 2 vols., pp. 392 and 326.

L. 216, quotes from "Rush's Memoranda of a Residence in London, p. 432." This is the true citation.	D. 177 cites "Rush's Residence in London, p. 432." This title does not show which book is referred to.
L. 217. "Parliamentary Papers, Leopard & Chesapeake, Feb. 1809, p. 29."	D. 177. "Parliamentary Papers, 1809, p. 29."

These Parliamentary Papers are the documents printed for the use of members during the session. Each document is printed and paged by itself. The only way to identify one is to give the date when it was ordered to be printed, or the head title. Mr. Lawrence has in his library a volume of the papers of 1809. It contains seven separate

papers, three of which have more than 29 pages. One of them is entitled "Leopard & Chesapeake," and was ordered to be printed in February 1809. On page 29 of that document is found the despatch quoted in L. and D.

A similar error occurs in D. p. 389, in quoting a passage found in L. p. 530.

I have examined the notes in the complainant's book and the notes in the respondent's book, for the purpose of ascertaining what works, or periodicals, or newspapers, or collections of treaties, or of diplomatic negotiations and papers, of debates and other works of that nature have been cited in the defendants' book, and are not found in the corresponding notes of the complainant's book. The complainant's last edition was published in April or May, 1863, I believe, and the preface to respondent's book is dated July 1866. During that time the series of books, periodicals, papers, &c., cited as above stated, by Mr. Lawrence, has been much added to. Some new and valuable treatises on International Law have been published. The results of my examination are as follows:

In the schedules which follow I have inserted all the citations of each book, &c. which I have been able to find in D. and have placed opposite to it the citation of the same from corresponding notes in L.

Dr. Travers Twiss is one of the greatest civilians and publicists of England. He has written two books: one is, "The Law of Nations. Rights and Duties of Nations in Time of Peace," London, 1861; the other is "The Law of Nations. Rights and Duties of Nations in Time of War." London. Preface dated June 18, 1863. He published also two pamphlet lectures on International Law, London, 1856. In L. there are many quotations from the first book, but of course none from the second, as it was published after L. The first book is cited in D. six times, and all these citations are found in the corresponding notes in L. I have not been able to find in D. any citation from the second book, although Part IV. of Wheaton's Elements, from p. 368 to p. 723, (the end,) relates to the law of nations in time of war, the subject of Dr. Twiss' last book. These books are not numbered vols. 1, 2; but are separate books. In L., however, the first book is cited as "vol. 1." It is cited in the same

manner in D. The book is divided into parts, chapters and sections. The citations are as follows:

L. 918, vol. i, chap. ix, § 160, p. 231.	D. 143, i, 231.
918, " "	145, 1 ch. ix.
p. 416, vol. i. § 203, p. 308.	319, i, § 203.
p. 424, vol. i, p. 318.	324, i, 318.
p. 462, vol. i, p, 356.	342, i, 356.

It will be seen that so far as the *mode of citing* is concerned, *i.e.*, by page or by §, the citations in D. might have been made by the use of L. without consulting the original.

On L. 416, is a quotation from Twiss, "vol. i, § 203, p. 308." Exactly the same quotation is found in D., p. 319, and is cited from "i. § 203." Only half of this quotation is found in § 203, the rest is in a note on the same page (308). In L. text and note are put together and the distinction is not noticed. The same thing is true of D.

The *Almanach de Gotha* is cited in D. several times. The same citations are found in L. This work is continued to the present time, *e. g.*

L. 979, 1862, 962-966.	D. 56, 1862, 962-966.
65. 1861, 884.	1861, 884.
p. 480, 1861, p. 8.	p. 356, 1861, 8.
p. 706, 1861, p. 49.	p. 514, 1861.

The citations from the *Révue des Deux Mondes* that are in D. are I believe all in L.

L. 157.	D. 128.
p. 844.	p. 674.

This is one of the leading French Quarterlies, common in this country, and continued to the present day.

I find the following in the two books:

L. 951. "Besides the articles qualified as such, are to be held as contraband of war the commissioners of every description sent by belligerents, and the despatches of which they are the bearers."

La Cronica, 6 de Octobre, 1862, This was a Spanish newspaper.

D. 639. The following is given in quotation marks.

"Besides the articles qualified as such, are to be deemed contraband of war commissioners of every description sent by belligerents, and the despatches of which they are the bearers."

It is not stated where this is found or taken from.

It will be seen that the extracts agree, with the exception of one word. I took the paper at the time, and thinking the paragraph might be useful to Mr. L., sent it to him marked. As it was published by him

soon after, and I have never seen it in English anywhere else, I infer that Mr. L. translated it. I have the paper now before me. It is called in both L. and D. the "proposed International code of Spanish America," and both refer to the declaration of Paris. It was simply a proposition of the Columbian government.

Le Nord is a daily newspaper published at Brussels. It is cited as follows:

L. supplement, pp. 6. 7, Mars 17, 1863, 24 Mars, 1863.	D, 65, March 17, 24, 1863.
pp. 982–4. 15 Aout, 1862, 31 Aout, 1862, 18 Octobre, 1862, 1 Novembre, 1862, Novembre 21, 1862.	p. 78. Aug. 15, 31, Oct. 18, Nov. 1, 21, 1862.
p. 707. 15 Fèvrier, 1861.	p. 514. 15 February, 1861.

London Gazette. This is a weekly official newspaper.

L. 534. 18 April, 1854.	D. 389. 18 April, 1854.
553. April 18, 1854.	p. 400. April 18, 1854.
553. 2nd of May, 1854.	p. 401. May 2, 1854.

Courrier des Etas-Unis, is a French newspaper published in New York.

L. 554. 23 Juillet, 1855.	D. 401. 23rd July, 1855.

Wait's American State Papers.

L, 495.	D. 120.
p. 215.	p. 177.

English Reviews.

L, p. 217. Edin Rev. Quarterly Rev.	D, 176. Edin. Rev. Quarterly Rev.

Hansard's Debates.

L. p. 47.	D. p. 43.
p. 495.	p. 120.
p. 139.	p. 121.
p. 140.	p. 121.
p. 175.	p. 145.
p. 245.	p. 191.
The matter here discussed is not in L. All that is in D. is substantially in Phillimore at the place cited.	p. 565. p. 567. p. 567.
p. 773.	611.
p. 775.	611.
p. 815.	612, where there is a miscitation.

Annual Register.

L	D
p. 41, (4 citations).	p. 38, (4 citations).
The *matter* stated in D is at L. p. 177.	
	p. 52.
	p. 65, (5 citations from Registers of 1863 & 1864), which are subsequent to ed. '63.
p. 85 states all the facts, citing Annuaire des Deux Mondes.	p. 72, cites Ann. Reg'r, Annuaire des Deux Mondes.
p. 92. (6 citations).	p. 77. (6 citations).
p. 499, 1836, pp. 1], 327]	p. 120, 1836, i. 327.
p. 140.	p. 121.
p. 133.	p. 121.
p. 924. (2 citations.)	p. 144. (2 citations).
p. 217.	p. 176.
p. 245.	p. 191.
	p. 371, 1841, viii. 310. (McLeod's case. The volume is really volume 83. The citation is given in Halleck at the place cited in D. as "1841, 8, 310.")
The matter in D. is all in L. p. 266. It is there cited from "Visitation and Search."	p. 216, 1858.
	Many facts here stated, for which no authority is given, are in L. and in "Visitation and Search."
p. 637.	p. 454.
p. 706.	p. 514.
	p. 567. "lxxi. 186." This is not in L. but is in Phill. at the place cited in D.
	p. 574, 1864, ~~b. in~~ since ed. 1863.
p. 459.	p. 339.
p. 978.	p. 39.
p. 41, (2 citations).	p. 43, (2 citations).
p. 873.	p. 712.

This work is common here. It is the leading work of the kind in the English language.

Annuaire des Deux Mondes.

L	D
p. 64, (5 citations).	p. 56, (5 citations).
p. 86.	p. 72.
p. 111.	p. 88.
p. 433, (2 citations).	p. 325, (2 citations).
p. 480.	p. 356.
p. 480.	p. 510.
p. 95.	p. 561.
p. 873, (2 citations).	p. 712, (2 citations).

As appears from the above there are fourteen citations of this work in D., all of which are in L.

I have observed that, in many cases, there are in L. several citations

made in a note in an arbitrary order. I mean in an order which is neither alphabetical, nor the order of dates, nor any necessary logical order, so far as I perceive. I find in D. that the same citations of books are made, and in the same order. The following table in which I have copied the authorities in the order in which they are in the respective books will exhibit these instances of identity or similarity in order.

L.	D.
p. 3.	p. 5.
Twiss, Marezoll.	Maine, Twiss, Marezoll, Woolsey.
p. 20. Heron, Felix, Polson, Manning, Hautefeuille, Riquelme, Bello, Hurd, Kent, Westlake, Phillimore.	p 21. Manning, Heron, Felix, Hautefeuille, Riquelme, Bello, Kent, Westlake, Phillimore, Woolsey.
p. 26.	p. 23. Several authors, thus: —
Austin, Hautefeuille.	Austin, Hautefeuille.
p. 41.	p. 38.
Sparks' Dip. Corr., Sparks' Life of Franklin, Dip. Corr., 1783, State Papers, U. S. Laws, Congr. Doc., Wheaton's Despatch.	Sparks' Dip. Corr., Sparks' Life of Franklin, U. S. Laws, State Papers, Wheaton's Despatch.
p. 43.	p. 38.
Forsyth, Att'y Gen'l. [This is in the reverse order of dates.]	Forsyth, Att'y Gen'l.
p. 43, and addenda to same, p. 978,	p. 39.
L'd Russell, Canning's Despatch, Canning and His Times, Ann. Reg.	L'd Russell, Canning's Despatch, Canning's Life, Ann. Reg.
p. 41.	p. 38.
Ann. Reg., Ann. Reg., Martens, Van Zuylen.	Ann. Reg., Ann. Reg., Martens, Van Zuylen.
p. 47-8-9.	p. 43.
As to South American Republics, Canning's Speech, Feb. 4, 1825, Hansard, Howard's Reports, Macintosh Speech, June 15, 1824, his Works, Phill., Twiss, Jackson's Message.	Says they were recognized "*first* by *U. S.*, and tardily by England," Canning's Speech, Feb. 4, 1825, Hansard, Mackintosh's Speech, June 15, 1824, his Works, Jackson's Message. [Observe that he puts the proof of *English* recognition, *first*.]
p. 117.	p. 52.
Treaty Oct. 1861, Instructions of March, 1861.	Treaty, Instructions.
p. 979-80.	p. 56.
L'd Russell, Gortschakoff.	L'd Russell, Gortschakoff. [The contrary seems to be the logical order, and the order of dates.
p. 132.	p. 121.
Ann. Reg., Martens.	Ann. Reg., Martens.
p. 495.	p. 120.
	As to our War of 1812.
Wait, Madison, Hansard.	Wait, Madison, Hansard.
pp. 139, 140.	p. 121.

Same subject as D.
Hansard, Hansard, Ann. Reg.
p. 156.
Queen's Speech Feb. 1862, Thouvenel to French Admiral, French *Expose*, Jan. 1862. [In addenda to this note, p. 978, are Emperor to Forey, Emperor to Lorencey, M. Chevalier, April 1862, Mr. Seward, Dec. 4, 1861.]
Negotiations as to paying Mexican Debt.
p. 159.
Seward,
Cowley to Russell, Sept. 24, 1861,
Russell to Cowley, Sept. 27, 1861.

Crampton to Russell, Dec. 15, 1861,
Russell to Wyke, 30th March, 1861.

As to Mediation in Portugal.
Hansard, Hansard, Ann. Reg.
p. 137.
Queen's Speech Feb. 1862, Thouvenel to French Admiral, French Statement, Jan. 1860, Emperor to Forey, July 1862, Emperor to Lorencey, M. Chevalier, April 1862, Mr. Seward, Dec. 4. 1861.

p. 127.
Seward,
Cowley to Russell, Sept. 24, 1861,
Cowley to Russell, Sept. 27, 1861.
[This should be R. to C.]
Crampton to Russell, Dec. 15, 1861,
Russell to Wyke, 30 March, 1861.

[Owing to a difference in the arrangement of the note, the despatches being cited in the same order: D. states the proposal to be Dec. 4, and its rejection Sept. 24.]

p. 918.
Twiss,
The U. S. authorities in this note are cited in the following order:
Cass (quoting), Kent, Story, Wharton, Att'y Gen'l Howard, Daly, Black in 1857.

Then p. 924. War of 1812, Ann. Reg., Ann. Reg., Wheaton, in 1840, Everett in 1853, Webster, Cass, 1859, Manteuffel to Fay.

p. 180.
Story, Westlake, Heffter.

p. 245.
Same subject.

Hansard, 1853, Palmerston, Ann. Reg., 1849, Heffter, Phillimore, Plots to assassinate Napoleon III.

p. 143.
Twiss,
Then states the U. S. view of the question, and cites:
Kent, Story, Wharton, Att'y Gen'l Op., Daly, Cass, (quoting part of the quotation given in L.), Black in 1857.
War of 1812, Ann. Reg., Ann. Reg., Wheaton in 1840, Everett in 1853, Webster, Cass, 1859 (quoting part of what is quoted in L.), Manteuffel to Fay, 1852.
p. 150.
Story, Westlake, Heffter, then some authorities not in L.
p. 191.
That Gr't Britain has refused to surrender political offenders.
Hansard, 1853, Palmerston, Ann. Reg., 1849, Heffter, Phillimore, Plots to assassinate Napoleon III.

p. 254.
Hautefeuille, Massé, Martens.
p. 390.
Martens, Fereira, U. S. Sts.
p. 480.
Annuaire des Deux Mondes, Almanach de Gotha.
p. 490.
Stating the American views of the French treaty, Jefferson, Hamilton.
p. 458.
2 Pet., 6 Pet., app. to Cong. Globe,1 853–4, Wheaton's Pinkney, Heffter, Att'y Gen'l op. vi., U. S. Sts., Globe, 1855–6, Jackson, An. Reg. 1834, Wheaton.
p. 512.
Heffter, Massé, Phillimore, U. S. and Prussia, U. S. and Venezuela.

pp. 640, 641 states what was said in approval by Russia, France, Prussia, Italy, the Netherlands. This is not the order of dates.
p. 660.
Hautefeuille, Pistoye.

p. 706.
Al. de Gotha, 1861, Swiss Docs. of 19th March. 5th and 9th April, 1860, Thouvenel of 7th April, L'd Russell March 22, Ann. Reg. 1860, Thouvenel 20th June, Le Nord, 15 Février, 1861.

p. 820.
The commentators cited are in this order, L. Palli, Hautefeuille, Westlake, Massé, Ortolan, Phillimore, Wildman, Manning, Heffter, Wheaton, Westlake, and sup. 844, Casimir Perier.
p. 828. (First paragraph.)
Ortolan ii. 334, Hautefeuille ii. 219,
p. 831.
Hautefeuille iii. 120, Ortolan ii. 311.

p. 842.
Marcy, Hautefeuille.

p. 193.
Hautefeuille, Massé, Martens.
p. 298. Subject of Passports.
Martens, Fereira, U. S. Sts.
p. 356.
Annuaire des Deux Mondes, Almanach de Gotha.
p. 365.

Jefferson, Hamilton.
p. 339.
2 Pet. 6 Pet., Globe app. 1853–4, 1855–6, Wheaton's Pinkney, Ann. Reg. 1831, U. S. Sts., Wheaton, Att'y Gen'l op. vi., Heffter, Phillimore, Halleck.
p. 373.
Massé, Azuni, Phillimore, U. S. and Prussia, U. S. and Venezuela, Heffter.
p. 454. States that an approval of the Marcy amendment was expressed by Russia, France, Prussia, Italy, the Netherlands.
p. 470.
Hautefeuille, Pistoye, and then two not in L.
p. 514.
Al. de Gotha, 1861. Swiss Docs. of 19th March, 5th and 9th April, 1860.
Thouvenel 7th April, L'd Russell March 22, Thouvenel June 20, Ann. Reg. 1860, Le Nord, 15 February, 1861.
p. 673.
Gives a list of commentators, L. Palli, Hautefeuille, Massé, Ortolan, Manning, Heffter, Kent, Wheaton, Phillimore, Wildman, Westlake, Casimir Périer, (same quotation as that on L. 844.)
p. 675. (First paragraph.)
Ortolan, ii. 334, Hautefeuille ii. 219.
p. 675. (Second paragraph.)
Hautefeuille, iii. 120, Ortolan, ii. 311.
p. 683.
Marcy, Hautefeuille.

p. 873.
Annuaire 1851–2, 1852–3.

Ann. Reg. 1860, French Const. of 1848 and of 1852, found in Tripier.
p. 257.
Hautefeuille, Massé, Ortolan, De Cussy.
p. 262.
Wheaton in 1842, Cass in 1842, Legaré in 1843, p. 265, Stevenson in 1841.

p. 712.
Annuaire, 1852–3, 1853–4, (should be as in L.)
Ann. Reg.
Tripier.
p. 216.
Hautefeuille, Massé, Ortolan, De Cussy.
p. 214.
Gives the opinions of "our statesmen and jurists," Webster, Wheaton, Cass, Legaré, Stevenson, Seward.

It is obvious that there are various ways of writing dates, e.g. 20 June or June 20. The instances enumerated below are cases where the same document or paper is cited in corresponding notes of L. and D.:

L. p. 533, March 28.
p. 634, 9th June.
p. 707, 15 Février.
p. 534, 18 April, 1854.
p. 553, 15th April,
April 18, 1854,
19th April.
p. 554, 23 Juillet.
p. 41, Sept. 17.
p. 42, Nov. 10.
p. 43, Sept. 20.
p. 43, May 6.
p. 978, June 23.
p. 978, July 23.
p. 47, Feb. 4.
p. 980, Sept. 30.
p. 980, 28th Sept.
p. 495, May 25.
p. 159, Sept. 24, Sept. 27, Dec. 15, 30th March.
p. 73, 27th February, 20th October.
p. 633, 18th May.
p. 632, June 18.
p. 638, 28th July.
p. 639, Dec. 8.

D. p. 389, March 28.
p. 454, 9th June.
p. 514, 15 February.
p. 389, 18 April, 1854.
p. 400, 15th April,
April 18, 1854,
19th April.
p. 401, 23rd July.
p. 38, Sept. 17.
p. 38, Nov. 10.
p. 38, Sept. 20.
p. 39, May 6.
p. 39, June 22.
p. 39, July 23.
p. 43, Feb. 4.
p. 56, Sep. 30.
p. 56, 28th Sept.
p. 120, May 25.
p. 127, Sept. 24, Sept. 27, Dec. 15, 30th March.
p. 62, 27 February, 20th October.
p. 450, 18th May.
June 18.
28th July.
Dec. 8.

I have not undertaken to examine the whole book for instances of this nature; the above are instances I have found from memoranda made for other purposes.

The following are the principal notes in D. which contain historical sketches and statements of cases between nations, and quotations and citations from other books and writers. In stating that the facts and authorities of a particular note in D. are found in L., or that a note of D. is made from L., I mean to be understood as saying that they are so stated in L., both with regard to the matter quoted and the manner of making the citation, that the note in D. could be compiled by the use of L., by a person of ordinary reading and intelligence in those matters. Matters which have occurred since L. was published I shall not notice in this connection. I will also state, with reference to a large number of quotations and citations in D. not to be found in L., that they are to be found in Halleck, Woolsey, or the notes to Judge Redfield's Edition of Story's Conflict of Laws. And when I say that certain citations in D. are from Halleck, &c., I mean to say that I infer that from finding sometimes one and sometimes several of D.'s citations in those authors, generally referring to the identical sections or pages. Nowhere in D. is any reference made to any book of the complainant's. I believe that D. is the only treatise on the subject published since 1863, and, I think, since 1855, that does not repeatedly refer to L.

D. note 2, and L. note 1, p. 3, correspond. They are attached to the same word of the text. They really refer to the matter of the text on D. page 16, where they would be appropriate. In L. two authorities are quoted. In D. those authorities and two other books published since L. are cited, but no statement of their contents given.

D. note 6, p. 16, and L. note 2, p. 15, and note 5, p. 20, correspond. The former is attached to the same word of the text.

D. note 7, p. 21. All the authorities are found in L. p. 20, in substantially the same order.

D. note 8, p. 22. The treaty with the Sultan, mentioned in this note, is found in L. p. 22. It has already been remarked that the phrase

used here, and apparently synonymous with the one used in L., is precisely the phrase which the treaty avoids using.

D. note 12, p. 31. This is a citation of the authority in L. note 14, attached to the same word of the text.

The same is true of D. note 14, p. 33, and L. note 15, and *addenda*.

D. note 15, p. 34, and L. note 16, p. 40, are upon the subject of the recognition of belligerency in civil wars. They are attached to the same word in the text. All the historical facts stated in D. and all the authorities (except some since L.) are in this note in L. and the *addenda* to it. That the error in L. in citing Ann. Reg. is repeated in D. has been already noticed.

D. note 17, p. 48, and L. note 20, p. 52, correspond and are attached to the same word of the text. The first statement in D. is not in L. and, I think, is incorrect. See U. S. protest, Am. Ann. Reg. 1830—1, p. 150. The latter part of the note of D. and the authority cited are in L.

D. note 18, p. 49, and L. note 21, p. 53, correspond and are attached to the same word of the text. All the facts in D. are found in L., with the authorities for some for which no authority is given in D.

D. note 20, p. 55, is found in L. note 23, p. 61, except as to matters since L.; the preliminary steps to them are noticed in L. *addenda* to this note, p. 979 and p. 994.

D. note 19, p. 52, is in L. 177.

All the facts and authorities in D. note 21, pp. 55–6, are found in L. note 24, pp. 62–6 — with one mistake in D. before referred to.

The fact stated in D. note 22, p. 56, and for which no authority is cited, is in L. note 25, p. 64, where no authority is cited. I have never seen it mentioned in any other book, though it was stated in the papers of the day (1861).

D. note 23, p. 56, is a bare *citation* of an authority *quoted* in L. note 26, p. 65, attached to the same word of the text. As appears from the authority referred to and from the quotation in L., the book cited shows that the State whose *condition* the text discusses no longer exists. It contains nothing as to the *condition* of the State during its existence.

All the facts and authorities in D. note 27, p. 64, are in L. note 30, p. 75 and supplement, except matters since L. The error with regard to the Diet has already been noticed.

All that is in D. note 28, p. 70, is in L. note 36, p. 82–4.

All the facts in D. note 29, p. 72, are in L. note 37, p. 85, 95, 348, 634–5.

All the facts in D. note 30, p. 77, are in L. p. 38, p. 91, 97, 983, except some matters since L.

D. note 33, p. 87. All the facts stated in this note and all the authorities cited are in L. pp. 109, 110, 111. For the treaty of 1857, D. gives no authority; L. cites De Cussy.

D. note 35, p. 91. The fact here stated is in L. p. 330, n. 108. There the treaty in question is quoted from Martens. No authority is given in D.

All that is in D. note 37, p. 116, is in L. addenda, p. 992, p. 993, except one fact which is since L. L. gives the authorities, Lesur's Annuaire and Le Nord. D. gives none.

All the facts of D. note 38, p. 118, are in L. pp. 131, 151, 65, 23, 330–1, 349, 447, 477. L. cites the place in Martens where the original text of the three treaties and the convention is given. No authority is cited in D. though he seems to have one or two articles of the treaty not found in L.

All that is in D. note 39, p. 120, is in L. note 50, p. 132.

D. note 40, p. 120, is a long statement of the principal instances of intervention and mediation. All that is here stated is in L. pp. 133, 139, 499, 495, 497, 140, 500, and addenda to the same on p. 1009, 1022, 1027, 1028. The significant fact with regard to the statement about the Queen of Portugal, namely, that a statement found in D. and L. is unintelligible without the previous statement which is found in L. but omitted in D.; and the error as to France, and the fact that the three authorities cited in L. are found in D. in the same order, and are the only ones there found, have already been noticed.

D. note 41, p. 126, is a long note about Mexico. All the facts and authorities that are stated in the first three pages are in L. pp. 156, 159, 157, 177, 509, and addenda 997–8. The remainder of the note relates to matters since L.

D. note 46, p. 137. The first citation is Story, Conflict, &c., and the three following authorities are found in Story. It may be remarked that one citation, Fœlix, Conflit des Lois does not refer to a *book* of that writer, but to a dissertation published in several numbers of a periodical, Revue Étrangere et Français, Vol. 7th, of which D. gives the page, but not the year or vol., though both are given in Story, and I have found in the Review and examined the places cited. The rest of the facts and authorities are in L. p. 165, except the reference to Redfield's Story. The text speaks of the effect of laws requiring transfers of *real property* to be recorded. D. note states that a French law requires the same thing as to "corporeal *personal* property"; if the writer had looked at the text of the French law in Westlake and Tripier cited by L., he would have seen that the law relates only to real property, and property so connected with it as in law to be deemed a part of it.

All the facts and authorities in D. note 47, p. 139, are in L. pp. 168–9–70, except the reference to Halleck and the references from Halleck.

D. note 49, p. 142, is on naturalization, and covers several pages. The first three pages relate to cases in which the United States have been

concerned. That upwards of fifteen authorities are cited by each in the same order has been already noticed. There is nothing quoted in D. that is not to be found in L., except the references hereafter mentioned. That both *quote* from a despatch twice, each giving the right date to it the first time, and each making the same error in that respect the second time, though the document is cited in both, has already been noticed. This matter is found in L. pp. 918, 919, 921, 924, 925, 926, 927, 928, supplement, p. 8.

The latter part of the note relates to the bombardment of Greytown, Koszta's case, &c. The subject of bombardment of Greytown and Antwerp is at 173–175 L., Koszta's is noticed p. 176, 229, 929 L., Tousigs at 929 L. This note, four pages long, could have been written by the use of L., without referring to any other book, except that D. says "on the subject of naturalization, see," and gives the name of Woolsey, § 66 and two *citations* found in that § of Woolsey, also the New Am. Cyclop. Art. 'Naturalization' and Heffter. That the same authorities should be cited in both books, in exactly the same order, (with one change,) with the *same* mistake in the second citation of one, (the first citation being right in both,) with not a word *quoted* in the second book that is not in the first, is natural if the one book has been resorted to for materials for the second. My examination of this note has shown me no fact which would contradict that hypothesis, or would suggest any other.

"Beudant de la Naturalisation" was an article in a French Review, afterwards issued in the form of a pamphlet of thirty-two pages. It is in Mr. Lawrence's library and is now before me. The author's name, conspicuously printed on the cover, is "Ch. Beudant." L. p. 900, calls him "De Beaudant." D. p. 145, in this note, calls him De Beandant copying the error.

D. note 52, p. 150. The first part of this note, stating the opinions of Story, Westlake, and Heffter, is all to be found in L. p. 100, except that the writer seems to have referred to the wrong place in Heffter, unless he had a different edition from the one I examined, that of 1857.

It has already been remarked that D. note 53, p. 151, is an exact reproduction, with typographical errors of L. note 62, p. 181, except that the note in D. is signed "D.," while that in L. is signed "L."

All that is in D. note 55, p. 151, is in L. note 64, p. 182, et seq. D. cites Op. Att'y Gen'l, vii. 22, "for the details of the decisions of the conflicts of laws." That page is the middle of an opinion, and is not more pertinent than any other page of the opinion. Upon looking at L. it will be found that it is the page there cited, as the beginning of a long quotation *beginning* on that page.

The authorities, D. note 57, are from Story and Woolsey.

D. note 58, p. 153, is all in L. note 67, p. 191, with this change, that L. cites Rev. Franc. et Etr., and D. cites Rev. Etr. et Franc. the same book previously cited by him from Story's notes on p. 141. A recurrence to the original, or any knowledge of the book, which I now have before me, would show that the Rev. Etr. and Franc. ceased in 1843, and that the Rev. de Droit Franc. et Etr. began in 1844, that year being vol. i, the title page of the book stating explicitly that it is a continuation of the Rev. Etr. and Franc., Foelix being one of the editors of each. The citation is from vol. ii of Rev. F. and Etr. D. adds something from Halleck. The treaty mentioned here is in L. p. 204.

D. note 60, p. 156, is in L. p. 200.

D. note 62, p. 165 is all in L. note 70, 204, attached to the same word of the text with this exception, that D. *quotes* from Webster's works at the place *cited* by L., that he *quotes* from Mr. Bates part of the matter stated and cited, with his authority, by L. from Mr. Bates. He makes a mistake in citing and stating at some length an article of Mr. Wheaton's from Rev. Fr. et Etr. It should be Etr. et Fr.

The writer does not seem to be aware that these are different books, the volumes of which are numbered separately.

D. note 63, p. 168 is substantially a repetition or summing up of the text to which it is appended. The authority cited is cited by Wheaton, note e, p. 162. For the rest of the note Dana refers to a case in XI Allen, (not yet published,) in which the U. S. was the party interested.

D. note 67, p. 175 is on impressment, and extends over three pages. It is all in L., note 72, and page 214, except that D. quotes from Ber-

nard's notes on the Trent case, not cited by L., says that "Phillimore (not cited by L) dismisses the subject with a single unintelligible remark," and *quotes* from Webster's works. D. *quotes* from the Quarterly Review, January 1862, p. 140, a part of what is quoted in L. It is thus given in L. "'exercised by our naval officers.' The writer adds, 'but we do not undertake,'" &c. In D. it is printed, "our naval officers, ... But we do not," thus signifying that the two sentences are not continuous in the original. I have the original before me. The *sentences are continuous*, there being nothing between the words "naval officers," and "But we." Both notes cite the same five despatches. One is cited from Parliamentary papers. The error in D. in the manner of citing this, of a nature not likely to be made by a person who had the original before him, has already been noticed.

D. note 68, p. 178, is all to be found in L. p. 219 et seq. and the addenda to it, p. 1002. Despatches quoted in L. p. 222, from "M. S. Dep't of State," cited in D. and no authority given.

D. note 76, p. 189, is in L. note 77, p. 236. D. puts in quotation marks some sentences used in L. in stating the treaty, the *words* are correct. U. S. Sts. xi. p. 741.

Most of D. note 77, pp. 189–90, is in L. p. 236. The reference to Mohl is from Woolsey.

D. note 78, p. 190, is, with one exception, in L. note 78, p. 237, 242–3–5 — Italian code. That the same authorities are cited by both in the same order and the misquotation in relation to the Russian Treaty has already been noticed.

All the facts and authorities in D. note 79, p. 191, are in L. pp. 243–4. A treaty between Russia and Prussia in 1857 is mentioned in both. It has already been noticed that *every word* of the title of the authority cited for it in L. "Martens, par Samwer, Nouveau Recueil, xvi. pie 2me, p. 595," is necessary to identify the volume. "Nouveau Recueil, xvi 595," the book cited in D. and which I have before me, is the volume published in 1848.

All that is in D. note 82, is in L. p. 254.

The substance of D. note 83, p. 193, so far as it gives anything besides the views of the editor, is found in L. pp. 247–252, except as to matters since L. The subject of this note is the definition of piracy under the Law of Nations.

D. note 85, p. 201, "Slave trade as Piracy," is two pages long. All the facts and authorities are found in L. note 84, pp. 263, 257–8–9, 270, 261–2–3, attached to the same word of the text, and the previous note 82.

D. devotes half a page to a statement of Mr. Seward's treaty of 1862, which is also stated and discussed in L. but the supplimental treaty ratified April 1, 1863, is of course not mentioned in L. and is omitted in D. The quotation used by D. as to the "sin of the slave trade," I have not been able to find.

D. note 86, p. 209, the prize cases Amedie, Fortuna, Le Louis, Africa, Diana, &c., are all mentioned at some length in Wheaton's text, p. 202, &c., in Dana's ed.

D. note 89, p. 213, is chiefly an expression of the editor's views as to the present condition of the law as connected with the slave trade. It has already been shown that the authorities in D. are to be found stated in the same order, in L. one of them being a despatch stated in L. to have been taken by him from MSS. in the State Department. No authority but one reference to An. Register is cited in D. for the despatches or the speeches of the English peers; they are from L. 216, and are there quoted from Lawrence's visitation and search. The illustration in D. p. 217, is to be found in "Visitation and Search," appendix, p. 231. D. also cites Halleck and Woolsey.

D. notes 91 and 92, pp. 222, 223, 224, are not historical notes. All the authorities in them are found in L. note 89, p. 288, except Story and Blackstone, and the Cyclopedia. The fact that in D. the citation from the German edition of Savigny gives

the same *page* that is given in L. for the French translation (that being the correct page of the translation) has already been noticed. In this case Savigny is cited by *page* in both D. and L. In the previous note D. p. 217, Woolsey and Savigny are cited, and in that note Savigny is cited by § exactly as he is cited at the place in Woolsey referred to.

D. note 95, p. 227 is the same as L. note 90, p. 290, with an additional authority, — Story, and another, cited in Story, — both are attached to the same word of the text.

D. note 96, p. 231, is the same as L. note 94, p. 294, and attached to the same word in the text.

D. note 97, p. 231, is a mere citation of four authorities — two of them are in L. note 96, p. 295, — the others are Story and an authority cited in Story, also referred to in Wheaton's notes 294, L's ed.

D. note 101, pp. 239–40 is attached to the same word as L. note 99, p. 304, and embodies that note. The rest is a statement of what is found in Phillimore, who gives several references to Burke, and his own opinion.

D.'s note 103 is from L.'s note 101.

D. note 104, p. 255, is the same as L. note 101, p. 319, except that the writer of D. has apparently looked at the text of the treaty cited by both from xi. U. S. Sts. D. states that the U. S. had questions with Venezuela and with Hayti, and states how the former was settled, but says nothing about the other. The statement in L. is the same.

Nearly all the facts and authorities in D. note 108, p. 258–9–60, are in L. p. 323 and 267–8. That the quotation from Twiss *exactly* follows the same quotation in L. p. 268, and that *both* differ from the original has been already noticed.

D. notes 109 and 110, pp. 261–2, are in L. p. 325–8.

All that is in D. note 111, p. 264, is in L. pp. 329, 330.

All the facts stated in D. note 112, p. 266, are in L. pp. 334, 335, 337.

Note 116 D. 276 is referred to L. 1002; the treaty is since the edition of L.

D. note 117, p. 277, is in L. note 113, p. 350. The curious mistake in D. as to the treaty about the navigation of the Danube, and the error in the named volume and part of Martens, have been already noticed.

D. note 118, p. 287, is a collection of treaties relating to the navigation of the St. Lawrence and the South American rivers. The same treaties, and all that is said of them, may be found in L. note 114, p. 360, attached to the same word of the text, and Supplement, p. 8. In the latter part, relating to Peru and Brazil, D. gives no reference. It is taken from Clay's despatch, p. 365 of L., which, I am informed, has never been printed by the government.

D. note 120, p. 291, is a citation of three despatches, all of which are in L. p. 377, in note 117 attached to the same word. Two of these are stated in L. to be MSS. in Dep't of State. No authority is given in D.

D. note 121, p. 291, gives two authorities. One is from Parliamentary Papers, and is in L. p. 378, note 118, attached to the same word of the text. The other consists of two despatches of Mr. Seward of 1865, and since L.

D. note 122, p. 295. This is a note, citing a number of despatches as to the mode of intercourse with foreign ministers. It is all found in L. pp. 384, 386, in note 120 and in note 121 which is attached to the same word of the text.

D. note 123, p. 297, is found in L. p. 388, note 125, attached to the same word, and the addenda to the same, 1004.

The substance of Dana, note 124, p. 298, is in L. note 126, p. 389, and sup. 9. It has already been stated that each cites Martens, and Pinheiro

Fereira, L. stating that the reference is to P. F.'s *note* to Martens while D. cites it as if it were an independent work.

D. notes 125, 126, p. 301, are in L. pp. 393–4–5.

D. note 128, p. 303, L. note 133, p. 398; D. states Heffter's views which are given at large in L. The despatch of Mr. Cass, the substance of which is stated, is quoted very fully in L., and is there stated to be from MS. in the Department of State. The St. referred to is stated in L. The citation of Woolsey is not in L. That from DeMartens is in Wheaton's note on p. 300 of D. The affair of Mr. Gallatin's coachman, in D. note 128, is found in L. 1006, and I am not aware that it is mentioned anywhere else.

D. note 129, p. 303, is a dissertation upon a particular topic, in which the editor professes to state the result of an examination of the works of other writers, and his own views. All that relates to other writers can be learned from L. note 134, p. 399, attached to the same words of the text, and the *addenda* thereto, 1006, 399, 400–1–2–4, 416.

D. note 130, p. 318. The only authority or fact prior to L. is found in L. p. 416, note 135, attached to the same word of the text. The matter is fully treated of in the text.

The same is true of D. note 131, p. 319, L. 136, p. 416. The whole of this note is a quotation from Dr. Twiss. It has already been remarked that the quotation is identical in L. and D., and that they do not agree with the original, it being partly from text and partly from note, without discriminating.

D. note 134, p. 323, is simply a citation of the authority cited and quoted in L. p. 422, note 141, attached to the same word of the text.

D. note 135, p. 324. All the first part of this note, both facts and authorities is found in L. note 143, p. 423, *et seq.* attached to the same word of the text, except that D. cites Phill. 240–275, citing no volume, and D. cites Heffter, not cited in L, but found in Halleck 239, The despatches cited are in L. and are there stated to be from MSS.

in State Department. The latter part is a list of treaties, all of which I believe, are in the note 143 in L. except one class of them, which are in note 74, L. p. 224.

D. 136, p. 326, is identical in substance with L. note 145, p. 430.

D. note 137, p. 326. This is all in L. pp. 422, 437, 438. One of the authorities is cited in D. thus: "(Mr. Marcy to Mr. Dallas, June 16, 1856, Ann. Reg. 1856, p. 277; Ex. Doc. H. R. 34th Congr. No. 107.)" This despatch is not in the Annual Register, nor in *Congr. Doc.* cited. I have never seen it in print. L. cites it from MS. State Department.

D. note 138, p. 338. All that is in this is in L. note 153, p. 454, attached to the previous paragraph with the following exception. L. note 154, relates to the Aves Islands, is on the same page, and immediately following note 153, and is attached to the same word of the text as this note of D. A despatch relating to the Aves Islands, and quoted in L. note 154, appears among the authorities cited in this note in D. with which it has no connection. There is nothing in the context to suggest how this error could have arisen, unless the compiler of D. had undertaken to copy all the authorities on L. p. 456, without noticing the termination of one note and the commencement of another. The despatch of Wheaton is referred to by Mr. L. p. 454, as being in MSS.

D. note 139, p. 339, is all in L. note 155, p. 458, attached to the same word of the text, except the citations of Phillimore, Kent and Halleck. Phil. and Kent are cited without referring to vol.

The letter of Wheaton to Att'y Gen'l is not found in Opinions of Att'y Gen'l, vol. 6, p. 291. L. quotes it as a letter to Mr. Butler, then Attorney General.

D. note 140, p. 341, is a citation of a single authority, found in L. p. 461, note 156, attached to a previous sentence of the text.

D. note 141, p. 342, contains two citations found in L. p. 462, note 157, attached to the same word of the text.

D. note 142, p. 350. The substance of this so far as prior to L. is all found in L. p. 325, note 106, on the same subject, except a passage which is from Wheaton's text.

D. note 143, p. 352. The despatch and the debates here stated and cited are found in L. pp. 473–4, note 160, attached to the same word of the text. The despatch of Marcy to Mason is stated in L. p. 473, to be from M. S. State Department. I have never seen it in print elsewhere. The references to Lewis and Bright are in L. 474. A considerable part of the opinion of the Court is repeated from Wheaton's text, p. 342 of D.

D. note 144, p. 355. L. note 162, p. 476, is a list of treaties of a certain nature, stating their substance. D. states that they may be found in Phillimore, and cites Woolsey and two authorities given in Woolsey, one of which is in Wheaton's note to the same section.

D. note 145, p. 356. All this is in L. note 163, p. 480, 701, attached to the same word of the text.

D. note 147, p. 364. The only historical fact is found in L. note 165, p. 494, and the citations are all from Lawrence or from the page in Halleck referred to by Lawrence.

D. note 151, p. 370. For the case of McLeod see L. 189, and authorities there. The subject of retorsion is found in Wheaton's text 505–6 (L) with references to Vattel and Kluber.

D. note 153, p. 374. All the facts and authorities are to be found in L. p. 253, p. 513, p. 536, supplement p. 13.

D. note 156, p. 387, is a long note. Every fact and nearly every authority is found in L. p. 530, 532–3–4, 773 except a citation of Woolsey and of Phillimore. It has already been shown that the citations from Hautefeuille here given in L. are, and are stated to be, from different editions with different paging. That the same *pages* are cited in D., but no notice is taken of the fact that they refer to entirely different editions

D. 157, p. 311 Many of these authorities are in L. 532–3, 610, 472, 512, 530, 543.

D. 158, p. 400. All the facts and authorities but one are in L. note 175, p. 551 attached to the same word of the text. It has already been noticed that the many dates given in these notes are written in the same manner in both.

D. 160, p. 417. All the facts and authorities are in L. p. 575, and supp. 13 D. cites "opinion of Mr. Black, Cass to Clay, Nov. 26, 1858, Senate Ex. Doc. 69, 35th Cong," as if the two former were contained in the latter, or as if they were three separate authorities. That session had ended before the last despatch was written. L. states that the opinion is found in that document, and that the despatch is from MS.

D. note 162, p. 421, is all found in L. p. 580.

D. note 166, p. 428. Nearly all the facts and despatches are in L. 586, 587, 589, 594. Some of the citations in the beginning of the note are from Woolsey.

D. note 168, p. 431. The first part is substantially in L. p. 596, note 187, attached to the same word of the text. The last part is since L.

D. note 169. Several portions are in substance in L. Much of what is cited from Pfeiffer is in Halleck, who refers to the authority.

D. note 172, p. 452. The first part of this is in L. p. 595, both cite Halleck; the other authorities in D. are found in the places cited in Halleck.

D. note 173, p. 453. Nearly all the facts and authorities in this long note are in L. note 192, p. 628, attached to the same word of the text, and the addenda to it, except that from the U. S. Dip. Corr. of 1861. D. cites more despatches of Mr. Seward and Mr. Adams than are cited in L. on the same subject. It has already been noticed that on pp. 453, 454, D. gives four dates of despatches, &c, in exactly the same *manner* as the same dates are given in L.; that with reference to the approval of the Marcy Amendment by the five European powers, D. mentions

the names of those powers in exactly the order adopted in L.; that not not being the order of the dates of their despatches given in L. The despatches are stated in L. to be from MSS. in the State Department. Both also cite the French official paper by the *same wrong* name, "Paris Moniteur."

D. note 172, p. 458, is all in L. p. 649, note 193, attached to the same word of the text, except statutes passed since L.

D. note 178, p, 470, is all in L. p. 660, except citations of Halleck and Phillimore.

As to D. note 186, see L. pp. 960, 680, 217, 1022, 669, 963, 672–3, and authorities cited, 669, 673.

As to D. note 208, see L. pp. 716–8, 733, 720–1, 189, 1022.

D. note 179, p. 471, is all in L. p. 662, except that D. seems to have looked at Phillimore at the passage cited by both. The date of the treaty is wrongly given by Dana.

D. note 183, p. 475. The facts and authorities are in L. note 199, attached to the same word of the text, p. 666, and the addenda to it, 1020–1.

D. note 185, p. 478. The convention here mentioned, and for which no authority is cited, is stated, and a reference for it is given in L. p. 670, note 202, attached to the same word of the text.

D. note 198, p. 504, cites Halleck, 675, and Manning, § 123. M. is not divided into §. The correct citation is p. 123, as given in Halleck, pp. 675–6.

D. note 201, p. 510, is in L. p. 701, note 211, attached to the same word of the text, and note 163, p. 480, referred to in that note. D. also refers back to his note, 145, which is attached to the same word of the text as L. note 163.

D. note 202, p. 514. This is a note with regard to Savoy. All that is here stated is found in L. pp. 705–6–7, note 212, attached to the same word of the text. All the authorities in D. are found in that

note. That they are cited in the same order, that the dates are mentioned in the same manner, and that the error in the date of the Swiss circular of April 9, found in L. reappears in D. has already been stated. And Dana mistakes in stating that the neutrality in question applies to all Savoy, whereas it applied only to certain districts.

D. note 204, p. 519. The historical part of this note, and the historical authorities, with few exceptions, are in L. pp. 712–13 note 213, attached to the same word of the text, and 492. The other authorities are from Halleck.

D. note 213, p. 532, is almost all to be found in L. p. 726, note 218, attached to the same word of the text, except that D. adds a reference to Halleck and some other authors.

D. note 215, p. 536. Many of these cases are referred to in L. 713, 491, 728–9, 920, 184, 970, 201, 736, 671, 208, 725, 730, 95, 124–6, 136, 773. Much of what is referred to is in L.

D. note 221, p. 584, is contained in L. p. 743.

D. note 222, p. 585, cites, "Treseot's Am. Diplomacy (New York, 1852); and Lord Mahon's History of England, vii. 46." This could readily be taken from L. note 227, p. 745, attached to the same word of the text, where the full titles and *editions* of the books cited are found. That the paging given in L. and D. is that of the Leipsic edition of Lord Mahon, and is not that of the English or of Little, Brown & Co., and that the wrong book of Treseot's is cited, though a reference by the writer of the note to Treseot or to Lord Mahon would have shown the error, has already been stated.

Dana note 223, p. 606, is a note about seven pages long, on "Free ships, Free goods." It gives a sketch of the negotiations and treaties of all the Powers connected with this subject. Nearly all that is in this note is found substantially in L. note 228, p. 766, attached to the same word of the text, and pp. 814-15, and addenda 1025. except that D. quotes a few text writers, from Philmore and Woolsey, and quotes Mr. Seward's correspondence rather more fully than L. does.

See L. 767-8-9, 770, 635, 774-6-7, 772-5, 815, 522, 1025.

D. note 112, p. 266. L. cites in immediate connection with the text p. 333, for a further view of the treaties on this subject, the French edition of Wheaton's History of the Law of Nations. The last treaty there mentioned was of 1841. D. after mentioning the conclusion of the treaty of 1857, refers to the corresponding page of the edition in English, published 1845, for a history of the subject between 1830 and the adoption of these treaties which was concluded in 1857. D. makes the usual mistake in copying references to treaties, in omitting all means of distinguishing the series intended. D. refers to An. Reg. 1857, p. 12–40. I cannot find there anything on the subject. He also refers to an Reg. 1858, 830, which contains no such page. The only way of accounting for this is that D., in copying L.'s list of authorities, on p. 335, omitted a whole line, thus — it reads in L. "Annual Register [1855, p. 291.] Almanac de Gotha, 1856, p. (54.) Ib. 1857, pp. (12,) (16,) (23,) (40.) Ib. 1858, p. 830." In Dana all the part in brackets — about a line — is omitted and it is made to read "Annual Register, 1857, p. 12–40, and 1858, 830."

D. note 226, 629, all the important facts in this note including the speeches in Parliament are mentioned in L. 796–7–8–9, 698, 800–1, 813. In citing Hautefeuille D. has, 631, confounded the two editions of the authority, giving partially the paging of each. It is correctly cited in L. 798.

D. note 228, p. 637. The two first pages of this note are confined to expression of the writer's opinions. The historical statements will be found given in detail principally from L.'s note 230, p. 805 and app. p. 939. The decrees and treaties may be found at pp. 796, 698–9, 700 of L.

The cases from Robinson's and Edwards' Reports, it is believed, are all treated of in the text of Wheaton. The subject of the Trent is fully discussed in L. 217, 197, 807, and in a long note in appendix, 939 to 960. L. sustains the course of Capt. Wilkes, while Hautefeuille condemns it.

D. note 230, p. 663. The authorities as to penalty for carrying contraband are identical with L. p. 808.

D. note 231, 666. The Dutch-Swedish treaty of 1675 is twice referred to by L. 629, 820; others p. 629, 949.

D. note 232, p. 671. The facts and authorities are almost entirely from L. p. 821. Mr. Cass' Letter, Lord John Russell's speech, Cobden's speech, 823, Berlin decree, Casimir Perier, and Revue, &c., 844, are all in L. and at considerable length.

D. note 233, p. 674, on effective blockades, may be said to be entirely from L. See speeches of Earl Russell and others, 828–831; Russell to Mason, Sup. 45; M. Rouher's note, 833; Wheaton's MSS. despatch to Buchanan, 835.

For Despatches at top of D. 675, see L. 829–832. Ortolan and Hautefeuille, and Lord Lyons to Admiral Mylne, 828; Moore's Privy Council cases, 836. These instances might be extended; see Sup. 21, 836, 848, as to D. 681. See 533–5, 842–3 as to D. 683.

D.'s quotation of Judge Story, p. 709, is exact with L. 868, and the facts and authorities in his note on convoy, p. 708, are substantially the same with L. 867.

The first part of D.'s note 250, p. 714, is in substance in L. 876. The cases of the Peggy and Ware *vs.* Tilton have no reference to the matter in Dana.

Although there is no list of errata to D. as there is to L. I have observed in D. many dates, figures, &c., which I was confident were erroneous, but considered to be typographical errors. These I have not stated here.

The Index to the second ed. of L. is very full, and so arranged as to bring together all matters relating to the same topic, so as to make it easy for a person reading it to get at once all the information on the subject he was looking for, or for a person copying from it to condense it.

Since the foregoing part of my affidavit has been printed, I have examined D. with reference to his citations from Hautefeuille. The result of my examination appears below. In the first column, I have put the citation as given in L. In the second, is the citation as given in D. It will be observed that, in L. the *page* is almost always given; that those citations in D. which are to be found in L. are nearly always given by volume and page, while in those not found in L. the page is never stated, but the citations are by title and chapter, precisely as they are found in Gen. Halleck's work, from which they could have been readily taken. The citations are from corresponding notes.

L.	D.
p. 21, tom. i, p. 3.	p. 21, i. 3.
p. 26. Speaks of his "admirable work."	p. 23. Speaks of "the distinguished writer."
p. 254. Tit. iii, ch. 2, §3, tom. 1, p. 190. 2me ed.	p. 193. Tom. i, liv. 3, p. 190.
p. 257. Tit. xi, ch. 1, § 2, tom. iii, p. 471, 487.	p. 216. Tom. iii. 471–487.
p. 321. 2me edition, tom. i, tit. 1, ch. 3, § 1, p. 89.	p. 255. i. 89, 239.
p. 340. Liv. i, tit. 1, ch. 1, sect. 4, § 2, tom. 1, p. 51.	p. 270. Liv. 1, tit. 1, ch. 1, § 4.
p. 532. Tit. xiii, ch. 1, sect. ii, § 2; tom. iv, p. 267; tom. iii, pp. 278–281, 2me edit.	p. 388. Tom. iv, p. 267; tom. iii, p. 278.

There are two editions of Hautefeuille. The first one is of *four* volumes, and was used by Mr. Lawrence in preparing the edition of 1855. The second one, which Mr. Lawrence also has, is in *three* volumes; and the paging of the two differs entirely from that of the first. The second edition appears to have been used by Mr. Lawrence in preparing his book of 1863. He did not change the paging of his former citations, but added the citations from the second edition, stating that they were from the second edition. It will be observed in the above citations that

the *order* of citing, placing vol. iv. before vol. iii. is natural in L., the first citation being made in 1855 from the old edition, and the second being added in 1863. But that order seems very extraordinary in D. unless the citation was copied directly from L.

The citations in L are from the two different editions. It seems improbable that in a note made at one time, D. should have used and cited from two entirely different editions, and without noticing the fact, or apprising his readers that they would require two different editions to find the passages cited — unless this was carelessly copied from L., the compiler not being aware of the difference of editions.

L. p. 649.
Tom. iv. p. 427.
p. 660.
Tom. iii. p. 380, 2nd ed.
Halleck, p. 881, cites for the same matter tit. 13, ch. 3.
p. 584.
Tom. i. p. 18, 2nd ed.
p. 726.
Tom. i. p. 380. 2nd ed.
Halleck 523 cites Hautefeuille, tit. 6, ch. 2.

p. 736.
tit. vi. ch. 1, § 1. Tom. i. p. 290, 2nd ed.
Halleck, 514, cites tit. 4, ch. 1.

p. 714.
Same thing is cited as Tom. 1, p. 250. 2nd edition.
Halleck, 518, cites tit. 5, ch. 1.

Halleck, 517, cites tit. 6, ch. 1.

p. 766.
Halleck, 633, cites tit. 10.
[There are only three chapters in this title.]
p. 798.
Tom. ii, p. 412.
Tom. ii. pp. 84, 101, 154, 2me ed.
Ib. Tom. iii, p. 222.
Halleck, 577, cites for the same point, Tit. 8, sec. 2.

D. p. 458.
Tom. iv. p. 427.
p. 470.
tit. 13, ch. 3, Tom. iii. p. 380.
And also cites Halleck, p. 881.

p. 505.
Tom. i. p. 19.
p. 532.
Tom. i. p. 380.
p. 532.
tit. 6, ch. 2.
citing in the same connection, Halleck, 523.
p. 550.
Tom. vi. ch. 1, § 1.
p. 519.
tit. 4, ch. 1, citing in the same connection Halleck, 514.
p. 520.
tit. 5, ch. 1, citing in the same connection Halleck, 518.
Chapter 1 above cited is 30 pages long, and p. 250 is about the middle of it.
p. 527.
tit. 6, ch. 1, § 1. citing, also. Halleck, 517.
p. 607.
ii. tit. 10, ch. 1–3, citing also Halleck, 632–5.

p. 631.
Tit. 8, sec. 2; Tom. ii, pp. 84, 101, 154, 412; Tom. iii, p. 222;

citing also Halleck, 569, 591.

The same confusion, with regard to the two editions before noticed, is to be observed here. But here, p. 412, is clearly cited, as if it referred to the same bound volume in which pp. 84, 101 and 154 are found. Whereas, as has been stated in the previous part of this affidavit, it does not.

	P. 657, speaking of Hautefeuille's pamphlet on the Trent case, he says "s stinguished writers."
p. 808. Tom. iii, pp. 224, 234. Tit. xiii, ch. 1.	p. 665. Tom. iii, pp. 224, 234.
p. 820. Mentions Hautefeuille, giving no citation.	p. 673. Mentions Hautefeuille, giving no citation.
p. 828. Tom. ii, p. 219, 2me ed.	p. 675. Tom. ii. p. 219.
p. 845. Tom. ii, p. 239, 244.	p. 686. Tom. ii, pp. 239, 244.
p. 851. Tit. xi, xii.	p. 690. Tit. 11, 12.
Halleck, p. 616, cites Tit. ii, ch. 3. The same reference should be to Tit. eleven, which relates to visitation.	p. 695. Tit. 2 ch. 3, citing also Halleck, 613, 619.
p. 870. 2d ed. Tom. iii, p. 162–4.	p. 710. Tom. iii, p. 162–4.

~~ELISHA R. POTTER.~~

Elisha R Potter

Circuit Court of U. S.
Dist of Mass.

This 24th day of October 1866, subscribed & sworn to by the said E. R. Potter before me

E. Merrick
U. S. Comr

William Beach Lawrence
vs
Richard Henry Dana Jr. et al.

Bill.

& Affidavits.

U.S. C.C.
Mass. Dist. } Oct. 24 1846.
Filed in Clerks Office
Subpœna issued returnable Dec. Rules
to wit Dec 3d 1846
Summons issued Oct. 31st 1846
returnable
at 10 A.M.
Attest J. G. Abbott
Clerk

that many of the notes presented in the edition edited by the respondent ~~whose case is under consideration~~, do infringe the corresponding notes in the two editions edited and annotated by the complainant, and that the respondent borrowed very largely the arrangement of the antecedent edition, as well as the mode in which the notes in that edition are combined and connected with the text.

1. That the complainant in a Court of Equity is the equitable owner of the notes in the two annotated editions described in the pleadings as arranged, and the mode in which they are combined and connected with the text.

2. That the title to the entire text, together with the title to the memoir and indices, is in the proprietor of the book, and not in the complainant as alleged in the bill of complaint.

3. That there are notes in the edition edited by the respondent of substantial importance in point of number and the value of the materials which do infringe the equitable rights of the complainant, as explained and defined by the Court.

4. That all the respondents had notice of the claim of the complainant, as explained and defined by the Court.

5. That there are notes in that edition of substantial importance in point of number and the value of the materials which do not infringe any rights of the complainant.

6. That the notes in that edition consisting wholly of citations found in the corresponding notes of the complainant do infringe his rights, as explained and defined by the Court, though many of them are unaccompanied by the extracts collected and presented in the next preceding edition.

7. That notes consisting of authorities or collections of authorities copied in like manner as described in the preceding proposition, and without remarks or comments, do also infringe the complainant's rights, though they are found inserted in, or prefixed or appended to, notes otherwise not objectionable.

8. That notes of which the whole or some substantial and material part is condensed from the corresponding notes in the preceding edition, or from the extracts therein printed and published, without any marks of original labor, or of any such labor except the study of the note copied and adopted, do also infringe the complainant's rights, as explained and defined.

9. That notes wholly original do not infringe.

10. That notes partly original and partly copied from the preceding edition do not infringe, except for the matter copied, if it be practicable to ascertain and define the separate proportions and make the separation of the same; but if not, still the respondents, at the proper stage of the case, must be restrained from using the part copied.

11. That the cause [redacted] be referred to a master to examine the pleadings and proofs and report the extent of the infringement as adjudged by the Court in this investigation, and also to examine and ascertain what, if any, other instances of the alleged infringements within the principles here explained are proved; and if any, to classify the same, and report the details, together with the reasons for his conclusions, for the consideration of the Court.

12. That all other matters in the cause and the same are [redacted] be reserved until the coming in of the master's report.

13. That the cause is referred to Henry W. Paine, Esquire, as master, for his examination and report in the premises, in conformity to

By the Court

John G. Nelson

Clerk

130

Lieutenant in Sea

Dana et-als

Dana

Nov. 27th 1829

Ann. 13/69

Please find enclosed MS. and title
book, from which printers
proofs. Please return to me
R. H. Dana jr

16.

Lawrence

v.

Danaval

Receipts for Exhibits

Respt. No. 17
Henry

Be it remembered, that I, Catherine Wheaton, of Cambridge, in Massachusetts, widow of Henry Wheaton, in execution of an agreement heretofore made by and between the Hon. William Beach Lawrence, of Newport, Rhode-Island, and myself, do hereby declare, agree and promise, with and to the said Wm Beach Lawrence, in manner following, that is to say.

First: The said Catharine Wheaton reserves unimpaired, for herself and her children, the full, legal exclusive copy-right in the text of the work of her late husband, entitled Elements of International Law.

Second: The said Catharine Wheaton recognises and agrees and promises in all ways to respect the right of the said Wm Beach Lawrence to edit the work and other matter of his own composition, which he may add to said work in both or either of the two editions of Lawrence's Wheaton, in the same manner, and to the same extent, as if he the said Wm Beach Lawrence had a full legal, exclusive copy right therein. But the said

Wm Beach Lawrence shall not publish
a new edition in the United States hereof until the last
edition is sold.

Third. The said Catharine Wheaton
hereby transfers and assigns to the
said Wm Beach Lawrence, all her
claims and interests in respect to the
whole of Lawrence's Wheaton, text and
~~Wheaton, Henry, History of the Laws of Nations~~
notes, for all and every part of
Continental Europe, hereafter

In testimony whereof, I the said
Catharine Wheaton have hereunto set
my hand and seal, at Cambridge
aforesaid, this fifteenth day of ~~September~~ October
in the year eighteen hundred & sixty three.
In presence of

Louisa C Day
Delia Davidson

Catharine K Wheaton

This agreement was altered in pencil by
Mr Lawrence, & returned. A new one was
drawn up by Prof. Parsons & sent to him
for approval. He declined. It is inserted here

beyond the one designated in Time to Smith?

Agreement
signed by Lord
& returned by
W. B. L
1853

R. H. Dana, Jr.
L. S. Dabney.

30 COURT STREET.

Boston, Oct 25 1870

Dear Sir

Will you send me, by the bearer, the document in Lawrence v Dana.

Being the sheets of the book, with my interleaves and pencil thereon

Yours truly

R. H. Dana Jr

Wm G Hutson Esq.

Chief U.S. Court

Due notice of motion to reopen in Jan 12th 1869 - should be Jan 12th 1870 —

W. B. Lawrence &c

vs.

C. D. Danforth et als

In the Circuit Court of the United States
District of Rhode Island
In Equity

Replication to the answer of C. D. Danforth

This Replicant saving and reserving unto himself all and all manner of exceptions to the manifold insufficiencies of the said answer for replication thereunto saith that he will aver and prove his said Bill to be true certain and sufficient in the law to be answered unto, and that the said answer of the said Defendant is uncertain untrue and insufficient to be replied unto by this Replicant, without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and confessed and avoided is true. All which matters and things this Replicant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by his said Bill he hath already prayed

Chas. E. Perkins
Solicitor for Complainant

Lawrence v. Dana

Replications to Answer
of C. N. Lamb.

MCC
Mass Dist } Feb 9 1867
Filed in Clerks Office
Att: J. G. Abbott
Clerk

W B Lawrence

vs

C. & I. R.R. Co. &c

Circuit Court U S

Dist. of Indiana

In Equity

Replication to answer of C. & I. R.R. Co. to
Orig. Bill & Cross Bill

Lawrence vs. Dana

Application to
Sen. of Lotte Brown &c,

MCC
Mapped } Feb 9 1887
Filed in Clerks Office
Att: J. G. Skelton
Clerk

T. B. Lawrence
vs
C. D. Damages &c.

Circuit Ct. Q. S.
Dist of Franklin
In Equity

Replication to Defendant's Answer & Plea

This Replicant saving and reserving unto himself all and all manner of exception to the manifold insufficiencies of the said Answer & Replication thereunto said that he will aver and prove his said Bill to be true certain and sufficient in the law to be answered unto and that the said Answer of the said Defendant is uncertain untrue and insufficient to be replied unto by this Replicant. This Replicant for answer unto such parts of the said Answer contained as is required to be replied unto, confessing and avoiding, traversing or denying the same doth say that he will aver and prove his said Bill to be true certain and sufficient in the law to be answered unto,

Certificate to Power of Trustees

UCC
Deed Dec 3 Feb 9 1887
Filed in Clerks Office
Attest: J. G. Shelem
Clerk

U. S Circuit Court.
District of Massachusetts

Wm B. Lawrence
v
R. B. Dana Jr et al. } in Eq:

It is agreed that N. Austin Parker Esq Notary Public, be appointed Examiner to take the testimony in behalf of the respondents in the above entitled cause. and Elias Merrin Esq U. S. Court to take the testimony in behalf of Complt in the same.

E. J. Brown
for Complt.
Constant Browne
Sol. for Little Brown & Co

T. L. Lothrop for
R. B. Lothrop

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Lawrence
v
Dana et al } in eq:

Agreement on
Examiner.

Mass.
Mass. Dist. } July 12. 1866

Filed in Clerk's office
at

U. S. Cir Ct – Dist of Mass.

Laurence
v.
Dana et als.

In this case the time for taking testimony is extended to include Sept. 9th, the Complt to have a reasonable short time after that for evidence in reply if required.

J. C. Stevens for Complt.
T. K. Lothrop for Respt

Wm B. Lawrence
in Eqr
v.
Rc H Dana Jr et al

Agr' to refund
time for taking
testimony

Mch 6
Copy Bond 3/13/67
Filed in Clerks Office
Mch 13 1867
J. G. Skelton
Clerk

Wm B. Lawrence
in Egypt.
Richd H Dana Jr

Agt

USCC
Sept 7 1867
Filed in Clerk's Office
All: J. G. Stilson
Clerk

Circuit Court of the United States

District of Massachusetts

In Equity

Wm Frank Laurence

vs

Charles E. Davis jr. et al

And now comes the said Charles E Davis jr. amends his answer as follows viz

By striking out therefrom after the 50th printed page of the record in this cause the words following viz. "But he does not know whether or no said contributions any agreement had been made or the necessary steps taken to make said Citizens Syndicate valid. He does not therefore know and cannot state whether or no said contributions have been paid thereto or any part thereof"

And by striking out of the 51st printed page of the record in this cause the following words viz. "and believing the same to be true and expecting to adduce the same in his own answer in the premises"

And by inserting in his said answer in lieu of the passages hereby ordered stricken out the words following viz.

"and having carefully read the amendments to said answer this day filed in this cause and finds the matters therein stated, including the said answer to be true to the best of his information knowledge and belief"

so amended as his own answer in all like particulars as well as in all matters relating to the copyright in the several dictures of said Musical Elements, and the compilements contributions thereto.

Lawrence v Dana & al

Amendment to Answer of C.H. Dana Jr.
Submitted with motion
Oct. 30th 1867 —

325

Laurence
vs Eq[t]
Dana Jr et al

Ag[t] [illegible]

KICC
Copy Dec[d] 26/[illegible]/26/1887
Filed in Clerk's Office
Att: J. H. Hudson
Clerk

U. S. Circuit Court

Dist. of Mass.

U. S. Lawrence vs. C. W. Dennett

All depositions taken before and including today, may be filed as of today

Boston Friday Sept. 20, 1867

J. Storer

for Complt.

324

Co Launch

of

Dunaval

Agt.

UCC. Asphodel
Sept. 21 1869
Filed a Claim
Office
Mr. J. G. Nelson
Clerk

Circuit Court of the United States

District of Massachusetts ss. Oct. Term 67.

In Equity

Wm Beach Lawrence vs. R. H. Dana Jr. et al.

And now R. H. Dana Jr. one of the Respondents comes & moves the Court for leave to amend his answer in the cause by filing herein the amendment herewith submitted.

Wm Russell
Counsel

Lawrence v Dana & al

Motion for leave to amend
answer of Dana.

UCC
Sept Dist } Oct. 30 '86
Filed in Court
Att: J. G. Sluken
Clerk

U S Circuit Court
Dist of Massachusetts } In Equity

William B Lawrence vs
Martha B Wheaton et als

And now comes the respondent Martha B Wheaton and moves this Honorable Court for leave to amend her answer according to the amendments ~~filed~~ herewith submitted -

Martha B. Wheaton

by

T. K. Lothrop

her atty -

W. B. Lawrence in Equity

v

R. H. Dana Jr et als.

Motion of M. B. Wheaton
for leave to amend answer

Misc
Mass Dist } Oct. 26th 1867
Filed in Court
Att: J. H. Nelson
Clerk

U. S. Circuit Court,
District of Massachusetts } In Equity.

W. B. Lawrence

v

R. H. Dana et al

The supplemental answer of Charles C. Little, Augustus Flagg and John Bartlett, surviving Defendants to the bill of complaint of William B. Lawrence, complainant.

These Defendants, saving and reserving all right and benefit of exception to the said bill of complaint, and further answering thereto by way of supplemental answer, say:

That since the filing of their former answer the said complainant has been examined as a witness in this cause and has produced with his Deposition divers letters in relation to the publication of the said edition of 1863 and its republication by said Brockhaus in Europe, and the payment to be made to the said Mrs. Wheaton; and these Defendants, upon information and belief derived and obtained from the said Deposition and the said letters, allege that the said Complainant, at the time when the said Brockhaus had so received the advance sheets of the edition of 1863 and was ready to pay the said sum of six thousand francs as aforesaid to the said Catharine Wheaton, and knowing said facts, did for the purpose of obtaining from the said Catharine Wheaton the pretended agreement in said bill mentioned falsely allege to the said Catharine Wheaton that

the said Brockhaüs would not pay the same without his the complainants, consent, and falsely alleged that as consideration for said payment, it had been agreed between himself and the said Brockhaüs that the said edition of 1863 was to be thoroughly revised for publication by him, Brockhaüs which would take from six months to a year, and the said payment would be made only upon his, the complainants, undertaking to make such revision, and that the said Catharine Wheaton, in ignorance of the facts, and induced solely by such false representations, (which were then known to the said Lawrence to be false,) did thereupon enter into the negotiations in said bill alleged to have taken place between the said Catharine Wheaton and the said complainant, and these Defendants submit to the Court here, that if the said negotiations resulted in an agreement, which a Court of Equity would otherwise enforce, (which these Defendants deny,) yet the said agreement, if any such was ever perfected and is still in force, (both which these Defendants deny,) by reason of said false and fraudulent allegations of the complainants in procuring the same, cannot be enforced in a Court of Equity.

And these Defendants further answering by way of supplemental answer, say:

That although true it is that the said Catharine Wheaton and the said Lawrence, during all the negotiations mentioned or referred to in said bill and answer, and up to the time of the filing of the said bill, did understand and believe that the notes of said Lawrence and the memoir of said Henry Wheaton published in the said editions of the said Elements published in the years 1855 and 1863, and both of said editions so far as they contained matters not contained in the previous editions of Wheaton's Elements published in Philadelphia

and also as far as they contained matters already published in said e-
ditions, were duly copyrighted by said Catharine Wheaton, and that
the copyrights thereof were operative and valid; yet upon information
obtained since their former answer and belief thereon arising, they say
that in law and fact as they are advised, no part thereof was duly copy-
righted by the said Catharine Wheaton by any copyright purporting
to be taken by said Catharine in either of said editions, or by any other
act or thing by her done in relation to said editions, nor was said Cath-
arine legally entitled to take said copyright in either of said editions
as proprietor of the contributions of the complainant thereto; by reason
whereof and of the acts and omissions of said Catharine Wheaton
in relation to said copyright specified in the complainant's bill and
which these Defendants admit there was not at any time during said
negotiations, any valid and subsisting copyright in any of the complain-
ant's said contributions to either of said editions; and these Defendants
submit to the Court here, that all the negotiations referred to in the com-
plainant's said bill, were founded on a mistake common to both the
parties, as to the character and existence of the subject matter of such
negotiations and that, if the same resulted in any agreement, which
a Court of Equity would otherwise enforce, (which these Defendants
deny) such agreement if any such was ever perfected and is
still in force, (which these Defendants deny,) is by reason of said
mistake wholly void.

And these Defendants deny all manner of unlawful confeder-
acies with which they are charged in the bill, and all charges of neg-
ligence, acts or intentions, without this, that any other matter or thing
in said bill alleged, necessary for this Defendant to answer unto, and
not herein or in their original answer in this cause answered unto, is
true to the knowledge and belief of these Defendants. All which mat-

ters and things these Defendants are ready to maintain and prove as this Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Charles C. Little
Augustus Flagg
John Bartlett

Lawrence
v
Damon et al } in Eq:

Supplemental Answer
Charles C. Little et al.

Filed May 1st 1868
J. J. Storrow
for Complt.

United States of America. }
District of Massachusetts } ss:
County of Suffolk }

On this 17th day of February A.D. 1868, at Boston in said County, personally appeared the above named Charles C. Little, Augustus Flagg and John Bartlett and severally made oath that they had read the foregoing answer by them subscribed and knew the contents thereof and that the matters and things therein stated as of their own knowledge are true and that as to those stated to be upon information and belief they verily believe the same to be true

Before me

Thurston Carter.
Notary Public.

Mich[ael] H. Dana Jr

Laurence
" } Pltffs
Dana et al

(3)

Supplemental Answer
Richard H Dana Jr.

This is the amendment which it was agreed might be filed
J. J. Storrow.

Circuit Court of the United States
District of Massachusetts ss

William Beach Lawrence in equity
vs.
Richard Henry Dana, et als

Supplemental affidavit of
E. A. Potter.

In the course of printing my affidavit heretofore given in this cause a few errors & omissions occured. I desire to add the following Table of errata

p. 60. 5th paragraph. L 219 should be L 216

p. 61. 10th line from top (left hand column) for "6th June" read "June 6th."

p. 63 first line: for "D. p. 217," read "L. p. 217."

p. 69 ninth line from bottom after the word "citation" add "so far as the name is concerned"

~~p. 71 [illegible] 11th line add~~
~~L. p.~~ ~~D. p.~~

p. 72. seventh line from the bottom, add "D. cites Phill. iii, 224-230"

p. 75. right hand column - 6th line from top - for 1860 read 1862

" Lowndes should be Lowndes

p. 75. At the end of the list of citations from the Annual Register add "I do not find from this that to which this work

p. 75 third line from top, for "107" read "127"

p. 77. Strike out 18th line from top.

p. 77 Seventh line from bottom, for "450" read "403-4"

p. 79. To remarks about note 15 add. "That the manner of citing Stapleton's book in this note shows that the writer was not aware that there were two works by Stapleton, & that in attempting to shorten the title given in D. he has so changed the name as to refer to another book has already been noticed ante p. 69"

p. 79 To remarks about note 21 add: "That both give the dates of the despatches on p 5-6 in the same manner has been noticed ante p. 77."
& that the despatches are mentioned in the same order (not the order of time) has been mentioned p 74.

p. 79. D. note 16. p. 41. is a very long historical note. All the facts & authorities are in D note 16 pp 41-70 on pp 41. 70, 376 attached to the same words of the text, but the text is in the same order which in neither the order of date nor the logical order according to the arrangement of the matter in D, has been noticed ante p. 75."

p 81. To remarks about note 7 add "That both cite seven authorities ~~despatches~~ in the same order, that not being the order of date has been noticed ante p 75."

affidavit p. 65— after "This citation is correct" add "except that 484 should be 483 where the matter is chiefly spoken of."

Same page & same note — right hand column — after "The matter is not in page 484 of 1st edition" add "nor of Kilmarnock octavo edition. The latter was not published until after the last edition of Lindsay which I have seen. The work referred to by Laurence is Records Diplomacy of the Revolution".

p. 82. ~~After~~ At the end of the first paragraph add: "That the error in L. p. 216 ~~refer to the page of the~~ ~~Burke's book cited is repeated~~ in citing the wrong page of Mr. Burke's book is repeated in D has been noticed ante p. 60.

p. 82. At the bottom of the page add: "That on p. 191 D. cites authorities in the same order in which ~~they are cited~~ the same are cited in L. has been noticed ante p. 75"

P. 85. ante 2nd paragraph add. "much of D note 84 I believe to be in L. Sir Richard Bethell was not Lord Westbury nor Lord Chancellor in May 1861"

p. 88. After the third line add: "This note 126 contains one of the instances noticed ante p. 65 where D. & cites the same pages of Hallam's History cited by in L. [redacted]

p. 90. Add at the bottom: "That the quotation is cited by both in the same way, and by the same, wrong name has been noticed ante p. 61.

p. 94. To remarks about D. note 112 add: "The subject of the note in D is the negotiations & treaty of 1857."

p. 96 After the second paragraph as it note 230 add: "The double coincidence as to the manner of citing Rawlinson & Hallam has been noticed ante p. 70."

p. 95. Add to remarks about D. note 202: "That D.'s translation of the Berlin Decree is exactly the same as L's has been noticed ante, p. 60

p. 95 Add: "D. note 247, p. 712, is all found in L. note 247 p. 872 attached to the same word of the text. That both cite p. 229 of the Annual Register for a matter found only on p. 229, and that that citation is merely an authority for ~~all of the~~ matters which is stated in L. but is not referred to in D, has been noticed ante, p. ~~62~~ 62. That both cite the authorities in the same order has been noticed, ante, p. 79.

My affidavit pp. 78-95 is confined to notes in D. the whole or substantially the whole of which are to be found in Record have been taken from the corresponding notes in L. I will add that my examinations of the books have shown me that in very considerable portions of many notes in D not noticed on pp. 78-95 of my affidavit are substantially the same as the corresponding portions of the corresponding notes in L. and that these notes in D. exhibit peculiarities which in my opinion would not occur if they had been made from any examinations of the original books cited in them but which would occur if they ~~were made~~ had been taken directly from L.

I will give a few examples

D. note 86 (the long note on the Mormon doctrine) makes with reg. to Mr. Cannon's connection with this doctrine precisely the same statements as are made ~~by~~ in L. p. 124 & addenda to the same p. 999, for which L. cites Shufeldt's Cannon and ~~as~~ Times. D. ~~[illegible]~~ cites ~~[illegible]~~ the title of another and different book, an error into which no careful or intelligent person would fall if he had the books before him or was even familiar with it. See my affidavit p. 89.

D. note 242. That the authorities in this note are taken at second hand appears from the error in citing D'Autheuille on p. 695. See my affidavit p. 98. D. cites Hallock who cites D'Autheuille "tit. 2". Hallock cites "tit ii". It should be tit XI. Hallock evidently wrote it II, & by an easy error of the press Hallock did not correct his own proofs as is his practice p. this became changed to "ii" which was carelessly copied into D as "2", the compiler not being aware apparently that the titles in D'Autheuille are distinguished by Roman numerals. But if D. had cited from the original there would have been nothing to lead to the mistake of putting "2" instead of "XI", the more especially as in the preceding note (241) he had the same title XI is cited & referred to for the same subject.

That preceding note D. 241, professes to state briefly D'Autheuille's general creed as gathered from an examination of the whole title in his book. If that note 241 had been prepared in consequence of reading the whole of that title, which is quite long, (and is I believe in real III, it is my opinion that the writer when he wrote the very next note could not have so far forgotten the matter & arrangement of D'Autheuille's book as to cite for the same subject-matter "Institutes & Search" Title 2 instead of title XI, in an entirely different volume. The error

indicated it is my opinion that the substitution of "2" & "X1" is not a printer's error, but is the error of the writer in copy from Bullock as above mentioned. (In the other hand) if note 241 was taken directly from note 242 which contains substantially all that is in D, note 241 ~~[illegible]~~ and if the matter in D note 242 was copied directly from Bullock, the mistake would be a very easy one to make.

I believe that many more instances could be given if time allowed.

Yours truly,

United States of America
Rhode Island District to wit
City of Providence this 30th day of October
Sworn to by the above subscribed
Seneca R Potter Register

Notary Public

50 cts

Commissioned as Special
Agent Treasury Dept
U.S. Internal Revenue
Service to take
affidavits &c &c

p. 64 - 18th line from top "to-day" left hand column
for "64" read "207"

Lawrence

vs.

Dana et als

Supplt. affd'
of Mr Potter

W.C.C. 3

Mayor Nov 1866

Filed in Clerks office

Att: J. Gleason

Clerk

UNITED STATES OF AMERICA.

Massachusetts District, ss.

To [illegible] Greeting.

GREETING.

FOR CERTAIN CAUSES, offered before the Circuit Court of the United States of America, for the first Circuit, within and for the Massachusetts District, as a Court of Chancery, WE COMMAND AND STRICTLY ENJOIN YOU, laying all other matters aside, and notwithstanding any excuse, that you personally be and appear before our said Circuit Court at the Rules, to be holden at the Office of the Clerk of our said Court, in Boston, in said District, on the first Monday, being the third day of December next, to answer concerning those things, which shall then and there be objected against you by [illegible] and particularly to answer to his bill of complaint this day filed against you in the Office of the Clerk of the said Circuit Court

and to do further and receive that which our said Circuit Court shall consider in this behalf And this you are in no wise to omit, under the penalty of [illegible] dollars And have you there this writ.

Witness, *the Honorable* [illegible] *at Boston,*
this third *day of* October A. D., 186[illegible], *in*
the [illegible] *year of the Independence of the United States of America.*



John G. Nelson Clerk.

MEMORANDUM. The defendant is to enter his appearance in the suit in the Clerk's Office on or before the day at which the writ is returnable, otherwise the bill may be taken *pro confesso*

United States of America, } Boston Cambridge Oct 25 1866.
MASSACHUSETTS DISTRICT, SS.

I hereby certify, that I have notified the within named Wheaton, Dana, Little, Flagg, Bartlett and Miles to appear at within limited by leaving at the last and usual place of abode of the said Wheaton a true and attested copy of this precept and by giving in hand to each of the aforementioned others a true and attested copy of this precept.

Fee & Dep $12.30
Copies 6.00
$18.30

Geo A Gordon
U.S. Marshal.

United States

Marshal.

In Equity,

William B. Rowland

VERSUS

Edward B. Dana et al. Defts.

SUBPŒNA,

RETURNABLE, RULES,

To wit, 1866.

$2.50 Dep

defendant is ready to maintain and prove as this Court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained

Martha B. Wheaton

United States of America
Dist. of Massachusetts ss

On this 14th day of January, A.D. 1868, personally appeared the above named Martha B Wheaton and made oath that the foregoing affidavit by her subscribed was true so far as the facts therein stated were within her own knowledge, and so far as she had been informed of the same she believed them to be true

Before me
Winslow Warren Jr
U.S. Commissioner

Lawrence
v
Dana et al
} in Eq.

Supplemental answer of
Martha B. Wheaton.

(1)

This is the amendment
which it was agreed might
be filed.

J. J. Storrow.
for Complt:

US Circuit Court
District of Massachusetts } ss In Equity

William B Lawrence

v

Richard H Dana jr et als

The supplemental answer of Martha B Wheaton one of the defendants to the Bill of Complaint of William B Lawrence complainant

This defendant saving and reserving to herself all right and benefit of exception to the said bill of complaint, and further answering thereto by way of supplemental answer saith:

That since the filing of her former answer, the said complainant has been examined as a witness in this cause, and has produced with his deposition divers letters in relation to the publication of the said edition of 1863, and its republication by said Brockhaus in Europe, and the payment to be made to the said Mrs Wheaton; and this defendant, upon information and belief obtained and derived from the said deposition and the said letters, alleges, that the said complainant, at the time when the said Brockhaus had received the advance sheets of the edition of

1863, and was ready to pay the said sum of 6000 francs to this respondent, and, for the purpose of obtaining from the said Catherine Wheaton the pretended agreement in said bill mentioned, falsely allege to the said Catherine Wheaton and to this defendant, that the said Brockhaus would not pay the same without his, the complainant's, consent, and falsely allege that as consideration for said payment, it had been agreed between himself and the said Brockhaus, that the said edition of 1863 was to be thoroughly revised, which would take from six months to a year; and, that the said payment would be made only upon his, the complainant's undertaking to make such revision; and that the said Catherine Wheaton and this defendant, in ignorance of the facts, and induced solely by such false representations, did thereupon enter into the negotiations in said bill alleged to have taken place between the said Catherine Wheaton and said complainant; and this defendant submits to the Court here, that if the said negotiations resulted in an agreement which a Court of Equity would otherwise enforce, (which this defendant denies,) yet that the said agreement, if any such was ever perfected and is still in force, (which this defendant denies,) by reason of said false and fraudulent allegations of the complainant in procuring the same,

cannot be enforced by a Court of Equity

And this defendant further answering by way of supplemental answer saith:

That although true it is that the said Catherine Wheaton and the said Lawrence during all the negotiations mentioned or referred to in said bill and answer, and up to the time of the filing of said bill, did understand and believe, that the notes of said Lawrence, and the manner of said Henry Wheaton, published in the said editions of said Elements published in the years 1855 and 1863, and both of said editions so far as they contained matters not contained in the previous editions of Wheaton's Elements published in Philadelphia, and also so far as they contained matters already published in said editions, were duly copyrighted by said Catherine Wheaton, and that the copyrights thereof were operative and valid; yet upon information obtained since her former answer, and belief thereon arising, she says that in law and fact as she is advised, no part thereof was duly copyrighted by the said Catherine Wheaton, by any copyright purporting to be taken by said Catherine in either of said editions, or by any other act or thing by her alone in relation to said editions, nor was said Catherine legally entitled to take said copyright in either of said

editions as proprietor of the contributions of the complainant thereto; by reason whereof, and of the acts and omissions of said Catherine Wheaton in relation to said copyright specified in the complainant's bill, and which this defendant admits, there was not at any time during said negotiations, any valid and subsisting copyright in any of the complainant's said contributions to either of said editions; and this defendant submits to the Court here, that all the negotiations referred to in the complainant's said bill, were founded on a mistake common to both the parties as to the character and existence of the subject matter of such negotiations, and that if the same resulted in an agreement which a Court of Equity would otherwise enforce, (which this defendant denies,) that such agreement, if any such was ever perfected and is still in force, (both which this defendant denies,) is by reason of said mistake wholly void

And this defendant denies all manner of unlawful confederacies with which she is charged in the bill, and all charges of imputable acts or intentions, without this that any other matter or thing in said bill alleged, necessary for this defendant to answer to, and not herein or in her original answer in this cause, answered to, is true to the knowledge and belief of this defendant. All which matters and things this

UNITED STATES OF AMERICA.

Massachusetts District, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Marshal of our District of Massachusetts, or to either of his Deputies,

GREETING:

WE COMMAND YOU that you Summon Richard Henry Dana, Jr. of Cambridge, Charles Sprague of Boston, Charles C. Little of Cambridge, Augustus Flagg of Boston, Publishers & Booksellers, & Hilliard & Gray, Booksellers & Publishers, doing business at said Boston under the style & firm of Little, Brown & Company, and Richard Henry Dana, 2nd & Francis Boott, both of said Boston, Counsellors at Law & Copartners, trading & doing business at said Boston under the name & firm of Dana & Boott, both of said Boston, Executors & Trustees of the estate & effects which were of Samuel Hoar late of Concord in the County of Middlesex & Commonwealth of Massachusetts, deceased, & Citizens of the State of Massachusetts,

(if they may be found in your precinct)

to appear before the Circuit Court of the United States, to be holden at Boston, within and for the Massachusetts District, on the thirty first day of October inst. at ten o'clock, A. M., then and there to show cause, if any they have why an injunction should not issue against them as prayed for in the Bill of Complaint of

William Ticknor Lawrence a resident of Boston in the State of Rhode Island, and a citizen of said State, as by said Bill in the Office of the Clerk of this said Circuit Court

HEREOF FAIL NOT, and make due return of this Writ, with your doings thereon, into our said Court.

Witness, *the Honorable,* Levi Woodbury *at Boston aforesaid, the* twenty fourth *day of* October *in the year of our Lord one thousand eight hundred and* forty two

John G. Allston

CLERK.

U.S. of America } Boston Cambridge October 25th 1866.
Mass District }

Pursuant hereunto I this day Summoned the within named Dana. Little. Flagg. Bartlett. Miles. and Wheaton to appear as within directed by leaving at the last and usual place of abode of the within named Wheaton a true and attested copy of this precept and by giving to each of the others aforenamed in hand, a true and attested copy of this precept.

Fee 6 Services $12.00
Mileage .30
Copies 6.00
$18.30

Geo A Gardner

U.S. Marshal.

In Equity,

William B. Lawrence

vs.

Richard H. Dana Jr. et al.

SUMMONS TO SHOW CAUSE.

RETURNABLE. October 31st 1866 at 10 A. M.

D. H. O'Brien

Wm Brach Lawrence
Surrogate
Richard H Dana Jr. vs.

Ans't of R H Dana Jr

Filed Feb 28 1867
Filed in Clerk's Office
Att: J. G. Sutton
Clerk

DISTRICT OF MASSACHUSETTS, ss.

Circuit Court of the United States.

WILLIAM BEACH LAWRENCE

vs.

RICHARD H. DANA, JR. ET ALS.

IN EQUITY.

ANSWER OF RICHARD H. DANA, JR.

To the Honorable the Judges of the Circuit Court of the United States within and for the District of Massachusetts.

The answer of RICHARD H. DANA, Jr., one of the respondents to the bill of complaint of William Beach Lawrence in the above entitled cause.

This respondent, reserving to himself at all times all manner of exception to said bill, in answer to so much thereof as he is advised that it is material for him to answer, says:

1. Upon his information and belief he admits that the complainant in his said bill has correctly alleged the dates of the publication of the various editions of the said Henry Wheaton's work, known as the Elements of International Law, and the date of the death of said Henry Wheaton, and of his widow, Catharine Wheaton. And as to the administration upon or succession to the estates of said deceased, upon his

information and belief, derived from reading the answer of Martha B. Wheaton, one of the respondents in this case, he alleges that the same are as therein set forth, and in that regard adopts the said answer as his own.

2. As to the procuring of the copyrights to said various editions of said work, by said Henry and Catharine, or by their daughter Martha B. Wheaton, this respondent has no knowledge further than appears by the said books themselves. And whether or not there existed on the first day of January, 1865, a valid copyright in the text and notes of said Wheaton's work, of the edition of 1836, he has no knowledge, and can neither admit or deny the same. But this respondent is informed and believes that the edition of said Wheaton's work published in 1846 was thoroughly revised and corrected by said Wheaton, and was by him considered as in fact a new work, and was so duly copyrighted by him, and that the copyright thereof is still subsisting and valid; and that there is therefore a valid copyright in the substance and body of the text and notes of said Wheaton's work as the same now stand in the eighth edition of said work hereinafter referred to. And this respondent has been intimately acquainted with the said Catharine from the death of her husband till her own death, and with the said Martha from the death of her father, and has always understood from them that said Catharine owned the copyrights in all the American editions until her death. He always supposed said Catharine owned absolute copyrights in all the text and notes of her husband in the edition of 1863, and in all prior editions, subject to no equities or rights of control in any person whatever. And he always understood from the said ladies, that the said Catharine's copyright in the editions of 1855 and 1863 included the contributions of the complainant thereto in the form of notes, memoir, appendix and addenda, as well as the original, and was equally clear of any equities or rights of control in the complainant or any other person. But he does not know whether, as to said contributions, any assignment had been made or other necessary steps taken to make said Catharine's copyright thereto valid. He does not therefore know, and cannot admit or deny, whether, as to said contributions, there is a valid copyright in any one.

3. And as to all the allegations of the plaintiff's bill respecting the terms upon which the complainant edited the sixth and seventh editions

of said Wheaton's work, and by whose request, and for what purpose or motive, he edited the same; and as to all matters relating to the connection of said Lawrence with said work, and his alleged authorship of any part of the text of either of said editions; and as to the preparation of the index to the edition of 1863, and payment therefor; and as to the purpose for which, or the agreement or understanding on which, the copyrights of said editions, including the notes and contributions of the complainant thereto, were taken out by said Catharine in her name; and as to the recognition by said Lawrence of the legal and equitable right of said Catharine to the said copyrights, and his disclaimer of all title thereto; and as to all matters relating to any contract or overtures or negotiations for a contract between said Lawrence and the representatives of said Henry Wheaton with regard to editions in French of said work, to be published on the continent of Europe by M. Brockhaüs, and money to be paid by said Brockhaüs, and relating to the use to be made of the complainant's said contributions, this respondent had but little knowledge before the commencement of this suit. But, since the same was commenced, he has obtained information by the complainant's bill and affidavit, and from conferences relating to the subject thereof with the said Martha and with Professor Theophilus Parsons and others: and now, upon his present knowledge, information and belief, in regard to all said matters, and in regard to the memorandum of June 14, 1863, set forth in the complainant's bill, and the means whereby the same was procured by said Lawrence; and as to the validity of said memorandum as a contract; and as to its legal effect and construction, if valid; and as to the understanding thereof by the said Lawrence and the said Wheaton's representatives; and the relinquishment and abandonment thereof, and of all claims under the same, by said Lawrence; and as to any rights, which the complainant claims or can claim, legal, equitable or honorary, accruing from any contract or any transactions between him and the said Henry Wheaton or said Catharine or Martha, in, to or over the said Henry Wheaton's text or notes, or the publication or annotation thereof, or in, to or over the complainant's own contributions thereto, this respondent, having carefully read the answer of said Martha B. Wheaton in this cause, and believing the same to be true and sufficient, adopts the same as his own answer, in all these particulars.

4. And this respondent upon his information and belief denies that, in any negotiations between said complainant and said Henry Wheaton's representatives, it was ever intended or understood by them or either of them, or by said Parsons, that the said Lawrence should have secured to him the complete and exclusive control, or any control whatever, of all or any future editions of Wheaton's Elements; and, on the contrary, this respondent is informed and believes that the complainant never intimated to the said Wheatons, or to said Parsons, any desire or intention to print his said notes at any time in connection with said Wheaton's text, nor claimed any right so to do, nor did the said Wheatons, or either of them, nor said Parsons, ever assent to or acknowledge any such right on the part of the complainant.

And this respondent, upon information and belief, denies that the copyrights of said editions of 1855 and 1863, or either of them, were taken out by said Catharine Wheaton upon any trust for the complainant, or for his use and benefit; and denies that the representatives of said Henry Wheaton are under any obligation in equity to make any conveyance to the complainant to secure to him any rights whatever in, to or over the text or notes of said Henry Wheaton, as they appear in any edition of the same ever published in the United States, or in any way to give or to secure to him any rights therein; and further denies that they are under any obligation in equity to give or secure to him any rights in, to or over his own contributions to said work; and avers that whatever they may do for the complainant respecting the same must depend upon their own judgment and taste.

5. The respondent denies that the firm of Little, Brown & Co. ever procured or employed him to edit or annotate the said work, or ever made any contract or overtures for a contract with him on that subject.

He admits that the said firm have published an eighth edition of said Henry Wheaton's Elements of International Law, in the year 1866, edited by this respondent. But he avers that he was requested to edit that edition, and annotate the same, solely by the representatives of the said Henry Wheaton; and that his contract and agreement therefor was made by him solely with the said Catharine, some two years before her death.

6. As to the time when he agreed and undertook to edit said work, the respondent says that the proposal was first made to him, to the best

of his recollection, late in the year 1863, or early in the year 1864. At that time he declined it, for personal reasons hereinafter referred to. The proposal was renewed by said representatives, and was then accepted by him; and the arrangement was settled, and he began to make preparations for his work, early in 1864.

7. As to the knowledge the respondent had at the time he made said agreement, of the legal and business relations between the complainant and the representatives of the said Henry Wheaton, the respondent answers as follows: — although he had been intimate with said Catharine and Martha for the period aforesaid, he had never been their adviser or agent in any matter of business or law, and had taken no part in what may have passed between them and the complainant theretofore; and, to the best of his recollection, he had never seen any documents relating thereto, and, if he had heard anything said thereupon, it was but casually, and had not remained in his memory. At the time he was first requested to edit said work, he believes that all he knew respecting the said relations was as follows:—

The said representatives, the said Catharine and Martha, told the respondent that they had resolved that Mr. W. B. Lawrence should not again edit the Elements of International Law; and that they desired a new edition to be got ready, from which the said Lawrence should be entirely dissociated. They wished a new body of notes to be prepared from the beginning, and that none of his notes or other original matter, or any part thereof, should appear in the edition. They wished a short memoir to be prepared, sufficient to give the reader an outline of the life, employments and public services of Mr. Wheaton, and of his contributions to the science and philosophy of public law, and to diplomacy and literature. To the best of the complainant's recollection, no papers were shown him respecting the relations of said representatives with the complainant. He understood generally from said Catharine and Martha, and he has no doubt it was their belief at the time, that said Catharine owned the copyright in the entire edition of 1863, including the contributions of the complainant as well as the original text and notes. Nothing was said, or in any way appeared, to lead this respondent even to suspect that the complainant or any one else then had, or ever so much as pretended to have, a right in the text or notes of said Wheaton, or any right to control or interfere with the free

discretion of the said Catharine to publish the same when, how, and by whatever editor and with what notes, she pleased.

As to the contributions of the said Lawrence, the respondent understood from the said ladies, that the said Catharine had a copyright therein, but that it was her desire that all the matter contributed by the said Lawrence should be excluded from the eighth edition; that she was dissatisfied with said Lawrence's work, upon her own judgment, and the judgment of those upon whom she relied, and upon what she understood to be the public judgment, and on that account alone should wish to separate him from the book; but also because of her personal relations with him, which were no longer what she once hoped she might maintain. The respondent does not remember the language used by said ladies, but they expressed themselves dissatisfied with his conduct to them personally, and no longer thought that his course had been dictated solely by benevolence toward them, or regard for the reputation of said Henry Wheaton. Among other things, the respondent remembers that their feelings were hurt by his entitling the seventh edition, "Lawrence's Wheaton, Second Annotated Edition;" thus attempting to make a new series in his own name, to be reckoned from the sixth edition, which he had not attempted to do in publishing that edition. They spoke also of some difficulties they had had with him growing out of some arrangement with said Brockhaüs, in which they were much dissatisfied with his conduct; but the respondent did not charge his mind with the same, as he did not suppose himself to have any concern therewith.

And, when the respondent subsequently accepted the proposal, he had no other or further information or belief, although he had asked the advice of the said Professor Parsons respecting the said undertaking. From all he learned from him or them, he supposed the whole matter lay within the control of the said Catharine, and that it was for reasons satisfactory to her, that she determined entirely to omit the contributions of the complainant in all future editions; and that, while she wished to separate forever the complainant's contributions from her husband's work, she wished, at the same time, to give the complainant the free use of his original contributions in any original work on International Law, or any department thereof, which he might desire to publish. Among the objections which the said representatives made to the complainant's

work were these: that he had expanded the book to an undue size, by materials unnecessary or ill-digested; that his mode of dealing with subjects, as well as his style, were thought ill of by the best judges, and that he had worked into his notes opinions on American constitutional and political questions which had given offence to the Government and patriotic citizens, while they had been acceptable to the enemies of the Union, both at the South and in Europe.

8. The respondent began his work early in 1864, and continued the same until July 4, 1866, when he finished the same, and sailed for Europe, returning at the end of September 1866. Until the filing of the complainant's bill, the respondent had no other or further knowledge than above stated respecting the complainant's legal relations with the said representatives, except the following: sometime during or near January 1866, the complainant, whom the respondent had never before seen, or known by correspondence, called upon the respondent, and entered into conversation on the subject of the forthcoming edition. He talked at length about his relations with the said Henry Wheaton and his representatives, and about the services he had gratuitously rendered to them, and made complaints respecting some transactions with Brockhaüs, but in a manner quite unintelligible to the respondent, and complained of his having become separated from the book; but the respondent distinctly understood him as disclaiming speaking of rights in law or equity, and as referring only to relations honorary and of courtesy. He spoke of the unfairness of using his labors; but the respondent assured him that he had been instructed not to reprint, and should not reprint, any of his notes or other original contributions, and that he believed it was the intention of Mrs. Wheaton to give him the privilege of using his notes in any original work he might undertake. And the respondent explained to him that, if he had any further objections, they should be addressed to Mrs. Wheaton or the publishers, as the respondent was only employed to prepare, as a literary and scientific labor, a body of notes for the proposed edition, the responsibility of publishing the work with new notes, and of superseding the complainant, not resting with the respondent.

The respondent afterwards mentioned this interview to the representatives of the said Wheaton, and to the said Parsons as their friendly adviser. This led to their speaking more fully to him of their relations

and negotiations with said Lawrenee, in regard to his and their use of his notes and original eontributions to said work; but the respondent did not feel bound to enter into the full details thereof, as he supposed his duty in the premises to be in no way affected thereby, and he made known his preference to stand in the simple relation of editor of the fortheoming American edition. What he learned from the said Parsons and the said ladies was, that an arrangement had been made, by whieh said Brockhaüs paid said Catharine an *honorarium* for French editions published and to be published on the eontinent of Europe, and that an attempt had been made to arrange by eontract the relations betwcen said Catharine and the eomplainant, the result of which, if earried out aceording to the understanding of said Catharine and of said Martha, would have been to give the eomplainant, at such time as would not interfere with the edition already published, the free right to use his eontributions to said Wheaton's works, in any original work he might desire to publish in the United States, in the same manner as if the said Catharine had obtained no eopy-right thereof, and at the same time to preelude said Catharine from making, if she desired it, any use thereof ineonsistent with the complainant's said right so given; but that the said attempt at an arrangement had been abandoned and disearded by the complainant, beeause certain demands made by him, whieh they considered new and most unreasonable, had been refused by them.

As the information at this time obtained by the respondent did not vary in any respeet the eourse he had pursued and intended to pursue as editor and annotator, he did not charge his mind with the details.

And he says that down to the time of the commeneement of this suit he had no other knowledge than as above stated; that no eommunieation was ever addressed to him by the eomplainant, and that he never read any letter, publie or private, from the complainant on the subject, except a short letter addressed by the eomplainant, not long before the publication of the work, to the "Daily Advertiser." He remembers at one time, after said interview, a document being sent to him by said Parsons, being a manuscript of about forty pages, which said Parsons said was a letter addressed to him by said Lawrence, and which, having read a little of it, he now sent to the respondent, but not saying that he had any authority to do so from the said Lawrenee. The respondent at onee returned it to said Parsons unread, with a note to the effect that he did

not know why he should read a letter from another gentleman to said Parsons, especially one which said Parsons himself had not read.

And the respondent, to the last, had no conception or suspicion that the complainant ever made any such claims as he now sets forth in his bill.

9. The respondent says that he has never attempted to conceal from the complainant or any one else, nor does he believe that the other respondents have attempted to conceal, that he was engaged in editing a new edition of said work from which the complainant's contributions were to be entirely omitted; on the contrary, he says that, in the year 1864, this fact was generally known among the leading professional, political and literary men in Boston and Cambridge, and as far in other parts of the country as such a fact would be likely to be known, and at the State Department, and among leading men of Congress and of the Government interested in the subject, and to our most important foreign ambassadors, with whom the respondent was in correspondence; and that the respondent was in communication on the subject with several of our most eminent jurists, and had made it known to all his acquaintances in America and Europe, who he thought would be likely to be interested therein, or to give him any assistance. And, if the complainant happened, in some unaccountable manner, to have been ignorant of the fact until a much later time, he could at any time, if he desired it, have ascertained, by inquiries of the said Wheaton's representatives, of said publishers, or of the said Parsons or others, whether and when there was to be an eighth edition, and by whom it was to be edited. But the respondent has no doubt that the complainant perfectly well understood, ever since 1863, that he would never again be employed to edit an edition of said work, and that the said representatives would at the proper time publish an edition thereof under another editor.

10. The respondent denies that his edition was intended to be, as alleged, a competing edition with the complainant's (although he believes such an intention would have been perfectly legal), for it was understood that his edition could not be ready for sale before the spring or summer of 1866, while there was little doubt that the complainant's edition would be sold by that time, notwithstanding the objections to it, on account of the unprecedented demand for works on International Law, and because his edition was the only form in which Wheaton

could be obtained. But the respondent admits that the other respondents did hope that his edition would supersede those of the complainant of 1855 and 1863, in private study and public use.

11. The respondent thought it not unlikely that the complainant might desire to incorporate his notes into some treatise he might publish, for which he knew the said Catharine would cheerfully give him permission. As to complainant's allegation that such a treatise by him would be affected by respondent's notes, this respondent says, that, whether affected favorably or unfavorably, it would be by contrast and not by resemblance. But he did not suspect, nor does he believe the other respondents suspected, that he had any intention, at any time, of publishing his notes, as notes, without the text, still less of attempting the unlawful and injurious act of publishing Mr. Wheaton's text with the complainant's notes, without the permission of the said representatives.

12. And the respondent says that the complainant's edition of 1855 was called the sixth edition, and his edition of 1863 was the seventh, and that of the respondent's necessarily the eighth; and that it was the intention of all interested in the book to restore the order of entitling, which the complainant had attempted to break through in the seventh edition, by entitling it, "Lawrence's Wheaton, Second Annotated Edition," thus attempting to make a new series in his own name.

13. The respondent says that, so far from attempting to create an impression with the public that the eighth edition contained contributions, of the complainant, and so to avail themselves of the reputation which the complainant alleges himself to have given to the book, the respondent knows it was the especial desire and purpose of the said representatives and publishers, not only to separate said book entirely from the complainant's contributions, but to have it distinctly understood by the public that such was the case; it being their opinion, upon their own judgment, and upon the judgment of others whose opinions they respected, that this course was necessary to preserve the reputation of the book. And under these instructions the respondent acted; and not only struck out the contributions of the complainant, but announced in his preface that they formed no part of the edition.

14. As to the allegations of the complainant that the respondent's notes are, in great part, taken and copied from those of the complainant, and that he has pirated and unduly used the contributions of the

complainant, the respondent totally denies the same and every part thereof.

The respondent says that his plan of work was this: to take the text of Mr. Wheaton, with Mr. Wheaton's notes, and annotate the same with original notes of his own, in the same manner as if they had never before been annotated. That it was no part of his plan to revise, reduce or alter the complainant's notes, even in such manner as the law of copyright would have permitted, if the complainant had had a copyright therein; but his course was, after reading a topic in the text, if he thought it required annotation, to examine all the works to which he had access bearing upon the topic, and among others, but not more or differently than others, the contributions of the complainant. And when he had made all the examination he thought necessary, he gave the subject the best reflection he could, and wrote out a new and original note, in every instance, in manuscript throughout, in his own hand or that of an amanuensis, and without other reference to or assistance from any notes of the complainant than as above stated. He then read the manuscript to two persons; one, a scholar who had studied eight years in German Universities, on the subjects of civil, Roman and canon law, and was well acquainted with their philosophy and literature; and, the other, a gentleman not learned in law, but whose judgment is valued in matters of taste, and who formed a good test of the intelligibility of the note to the general reader. The respondent believes that every note went through this process. After this consultation, some of the notes were entirely rewritten, and many of them considerably altered in the manuscript; and neither of these gentlemen saw either of the complainant's editions or any of his notes.

After these corrections, the manuscript was sent to the printer, who printed directly therefrom. Two copies of the proofs were sent, one to the respondent, and the other to the said scholar. Upon these they conferred again; and so many changes were then made as to cause considerable expense to the said Martha and the respondent for extra alterations, beyond the twelve per cent allowed by the publishers.

Since the commencement of this suit, the respondent has obtained from the printers the entire matter sent by him to them from which to print his notes, and, after a careful examination, he finds the whole of it to be manuscript except some two or three instances of quotations from

statutes or treaties, not over ten lines in all. He finds that he sent to the printers manuscript enough to have made 425 pages of the book, if printed in the same type with the text; and he says that he never in one instance cut out any extract, of any size whatever, of the complainant's contributions. He had but one copy of the complainant's edition of 1863, and he sent that to the printer by sheets, always about one hundred pages in advance, and he finds it now in the printer's hands entire. When he had not the sheets of the edition of 1863, he read that of 1855. And he further says that he is quite sure that there will not be found in his notes a single sentence, or clause of a sentence, copied from any original matter contributed by the complainant.

The whole plan and system of the respondent were totally different from those of the complainant, as well as his mode of thought, his manner of receiving impressions from others, and especially his mode of communicating his own ideas in written style. His purpose was to make his edition, with the exception of the matter of Mr. Wheaton himself, as different as possible from what the complainant had made the seventh edition; and it is his belief that, considering they had the same work to do, with substantially the same materials, the difference in their mode of executing the work will be found extraordinary.

15. The respondent says that it was a part of his contract that he should take no charge of the mere mechanical reproduction of the text and notes of Mr. Wheaton. The said representatives assumed the text of 1863 to be authentic and correct; and the printer was to reprint the same, under the direction of a competent scholar, who was to be employed by the publishers. The respondent was at liberty to make any slight and formal changes that he thought best, on reading the new proofs sent to him, or that the proof-reader might suggest; but no substantial changes were to be made in the text, whatever the changes of the law or the opinions of the editor. And he believes the text to be the same as that of 1863, except formal changes of grammar or punctuation, and corrections of evident verbal mistakes in the previous edition. If it had been called to the attention of the respondent that so much as a single sentence of the text of Mr. Wheaton had been altered by the complainant in the edition of 1863, or had even been merely translated by him from a French edition by Mr. Wheaton, he would at once have restored or re-translated the same,— not from any doubt of said Cath-

arine's right to reprint the whole text of 1863, but as more agreeable to her wishes and feelings and to those of the respondent. That this did not come to his attention, was doubtless owing to the fact that he was not charged with the preparation of the text.

16. The respondent says that it occurred to him that an improvement might be made in the arrangement of the text, which was assented to by the said representatives and publishers. The previous editions had been divided permanently into four parts, and each part subdivided into chapters, numbered anew for each part, and each chapter subdivided into sections, numbered anew for each chapter, and the paging had been changed for each edition. This made citations from the work very inconvenient. A passage must be cited either by part, chapter and section, or by the page; and, if by the page, the citation was applicable only to the edition from which it was made. The text being now fixed by the death of Mr. Wheaton, the respondent divided it anew into sections, according to subject-matters, of as nearly uniform length as practicable, numbering them continuously from the beginning. By this method, there may hereafter be a uniform mode of citation. The respondent found that Mr. Wheaton had paid little regard to the division into sections, and the respondent was obliged to do the whole work over again with even more difficulty than if there had been no sections in the previous editions. He made 551 sections where there had been 234, and gave to each section its appropriate title or marginal note. This change required the further labor of altering every reference, without exception, made in the previous editions, from one part of the book to another. In this change the respondent has no doubt there is a copyright.

One objection to the complainant's edition was the great bulk to which he had extended it, as it was believed unnecessarily, as aforesaid. The respondent, doing all he thought the duty of an annotator required, was able to produce his edition in 796 pages, while that of 1863 has 1,232. The complainant's Memoir occupied 60 pages, that of the respondent less than 7; the complainant's Appendix and Addenda 138 pages, while the respondent had neither,— making a difference of 436 pages in the bulk of the two works, although each has the same amount of the text and notes of Wheaton.

17. The respondent says that he had in his study a respectable

collection of books of his own, or borrowed, on international law, and kindred topics; on prize, maritime and public law; of works of history and biography, encyclopædias, Congressional documents, diplomatic collections, American and European, and of State papers. He had also access to the following libraries, with the right to read in all, and to take out books from most, either in his own name or that of some one else: viz, in Cambridge, the general library of Harvard University, and the library of the Law School; and, in Boston, those of the City, the State, the Athenæum, the Historical Society, and of the Boston Bar. He had access to private collections also. He had also offers of aid from the Department of State, and received documents from that department, such as were open to the public, down to the time of going to press.

As soon as he accepted the proposal to edit this work, he made known his purpose to friends who could supply him with documents, and made a business arrangement, at his own expense, with an American gentleman in London, who is particularly versed in the science of bibliography, and acquainted with the book market, to keep him supplied with the latest editions of standard works in England or on the continent, and with late works, whether books or pamphlets, and with articles in the journals or magazines, bearing on his subject. From this and other sources, he was supplied with the latest editions and with the newest productions, and had a valuable collection of pamphlets, small books or monographs, and articles from newspapers, which latter were cut out, and put in envelopes, and entitled by subjects, and kept in files. The period from 1861 to 1866 was fruitful in such books, pamphlets and articles on points of international law, often written with great learning and ability, and often liberally supplied with references to authorities; and to them the respondent was largely indebted. He had also, in these libraries, access to Congressional and other public documents, State Papers, etc., from the Revolution to the time of his writing.

And the respondent cannot admit the allegation of the complainant, that there was no book but his own annotations which collected, or undertook to collect, and present in a convenient form, the authorities upon the questions discussed in Wheaton's work. On the contrary, he says that there were several works as good as the complainant's in

respect of collections and authorities, and two which, in the respondent's opinion, were much better, being more full, and having altogether a more systematic and philosophic arrangement. And while the complainant and respondent had the same ground to go over, and the same materials to deal with, from the beginning to 1863, and the respondent had new ground only from 1863 to 1866, and, each doing his work thoroughly, they would naturally use the same materials, though in different ways, still he is informed by one whom he has employed to make the examination, and believes, that nearly one-half of his references are not to be found in the complainant's work, and that, of those which are in the complainant's work, a large part are also in other works older than his, to which the respondent and he had access in common, to say nothing of those found in later works, in pamphlets, and in articles in periodicals and magazines. And as to any one reference the respondent made, which is found also in the complainant's work, the respondent cannot tell whether he is indebted to the complainant for it or not, until he shall have examined every other book, pamphlet, or article to which he had access, in some part of which it may possibly be found.

As to the original matter of the complainant, the respondent says he was less indebted to that for thoughts and views and facts than to the works of several other authors which he had constantly before him, and on which he placed more reliance. He found that the complainant's style of writing, his arrangement, and especially his excess of matter accumulated, made his long and more important notes very difficult to read and comprehend, and as to some notes, he admits that he did no more than read as far as he could in them, and either not read at all, or only skim over the rest.

18. The respondent says that, in reading upon this subject, all the historic facts and diplomatic acts and other public matters which he found stated by any author, he felt himself at liberty to permit to pass into his mind, and become a part of his knowledge, without inquiring whether the book from which he learned them was under copyright or not, and treating the complainant's notes as, and not otherwise than the works of other authors. He cannot now know, as to any such fact in the complainant's notes, whether it became known to him by means of that note, or was common knowledge, or had been seen by him elsewhere, before or after reading the complainant's note, or even that he saw

it in such note; but, wherever he learned it, he considered himself entitled to know it, and to permit it to become a part of that stock after reflection upon which he wrote out a new and original note, and at liberty, if expedient, to refer to it in such note. He has no doubt that some of his notes will refer to and deal with historic and diplomatic transactions dealt with and referred to in the complainant's notes, and possibly some which are nowhere else referred to (although that the respondent cannot now admit or deny), but the manner in which the act or transaction is treated and referred to by the respondent, and the whole style and character of his note, will be found as different as possible.

19. By reason of something intimated in the complainant's bill and affidavits, the respondent feels obliged, and with great reluctance, to make the following statement:—He had reason to believe that whatever the representatives of Mr. Wheaton could offer to an annotator, in the way of pecuniary compensation, must come entirely from themselves, and must be quite small. He had once declined their offer, from the fact that the losses he must sustain in professional and literary engagements, compared with which the offered compensation was but nominal, would be a greater sacrifice than he thought himself able to make. Their offer was, however, as much as they could afford, or as he would be willing to receive from them. He knew that their proposal had been declined by at least one other person; and, when it was repeated to him, he accepted it without any change in the terms, and with the knowledge that he should have a large pecuniary sacrifice to make, and induced by other motives, among which he admits was his love of the subject, his desire to increase his acquaintance with it, and a hope of gaining reputation if he succeeded. His objections above stated were not communicated by him to the representatives of Mr. Wheaton.

The respondent says that from early in 1864, he devoted himself assiduously to this work for a little over two years; that he gave up professional and literary engagements, some of which were very lucrative; and in his office of Attorney of the United States, he made such arrangements as relieved him, at some cost, from all work which his duty to the Government allowed him to throw on highly competent assistants; that he labored severely, even in vacations taking his books into the

country, to the utmost that a naturally strong constitution would bear, and with some injury to his health, until July 4, 1866, when, having finished his work, he allowed himself a short absence in Europe for recreation and the regaining of his health.

20. As regards references, by which the respondent means the simple giving of the name, volume and page or section of a book, without a quotation therefrom, the respondent says that his usual course was, in reading any author to take down on sheets of paper all the references given; thus he obtained large numbers of references, arranged by topics, and placed together without any means of ascertaining the book from which they were taken. From these sheets of paper, he examined the authorities in his own library; and, if they were not there, he kept the memoranda by him to examine the citations in the various libraries in Cambridge and Boston to which he had access. When he had completed a note he wrote out on the manuscript, that was to be sent to the printer, such references as he chose, from his sheets of paper. He could not at the time tell, still less can he now tell, from what book he took any one reference. In this respect, he used the complainant's notes as he did the works of other authors, but not more or otherwise; and he thinks far less than two or three authors, whose volumes were always on his table. He did not consider his duty to be like that of an advocate making an argument to a Court, to refer to only such authorities as he thinks to be important, and to sustain his points; but, regarding the work as one of international science, addressed to scholars in all nations, he made a collection of references to all books or documents which any student might desire to see or be able to find, on whatsoever side they bore; and, even where the respondent did not think them of much value, if they had been thought so by respectable authorities. Where he cited an authority as valuable and directly in point, it would generally so appear.

The science being international and of great antiquity, there are works upon it now out of print, and which, it is supposed, can scarcely, if at all, be found, and others which can be found only in some European libraries. Extracts from these have passed down by tradition among writers, and references are made to them, by chapter and section, as a part of the traditionary learning on the subject which should not be lost, and to enable a student of the modern work in some parts

of the world to consult them, although they often cannot have been actually examined in the original, by the writers. The respondent does not doubt that, in this way, he may have passed down references to books to which he could not get access, since he knows he should have thought it not only his right, but his duty to do so.

21. When an author whom the respondent consulted referred to documents as being public documents, diplomatic despatches, or other State papers, the respondent felt at liberty to avail himself of the knowledge of such a document so acquired, and of its character; to consult the same, if he could get access to it; and, if impossible or very inconvenient to do so, as in case of most foreign documents and of some American, to trust to the author to some extent, to allow the fact to become part of his stock of knowledge, which he had a right to reflect upon and to use, and this without regard to whether the book was copyrighted or not; and the right, if expedient, to repeat an extract from the document, or make a reference to it in his notes, for the benefit of others who might be able to examine it. And he does not doubt that he may have done so in some cases in respect to the complainant's notes, but not more or otherwise than with other authors; and he is sure that the manner in which he has used such public document, or extract from the same, in his note, will be found original, requiring original labor and thought, and very different from the note of the complainant. But he thinks it will be found that there are few instances of American documents referred to, from any author, to which he did not have access, or which did not deal with matters of common knowledge.

The respondent does not doubt the right of the said Martha to use the entire work of the complainant (his original matter, as well as his references); and, in what he has said upon this point, he means merely to allege that he has made no use of the complainant's original matter or collected materials which would have been unjustifiable or in the least objectionable, if the said Martha had had no such right, — as if, for instance, the complainant had had a separate copyright in his contributions, and the law of copyright had been the test of the use to be made thereof by the respondent.

22. As to the Index, the respondent says that he had nothing to do with the preparing thereof; that it was prepared by a competent person employed by the publishers at the expense of the said Martha and the

respondent, and was made while he was in Europe; and he does not know how far the person who prepared it may have used the Index of 1863; but the respondent always understood, and now believes, that the Index of 1863 was made at the expense of Mrs. Wheaton, and was the property of said Martha in law and equity, and that she could use as much of it in the new Index as she chose.

23. And, in general, the respondent says that his relations with the eighth edition were simply those of an annotator and editor, employed by the representatives of Henry Wheaton. That he knew little, and that incidentally, of the relations between those representatives and the complainant. That he knew his course was to build up a new and original body of notes on the basis of the text of Wheaton, and to leave out all the original contributions of the complainant, and to discharge the book from them completely, and to make this fact known to the public. That he knew that this was the wish of the said representatives, from various reasons,— from their personal relations with the complainant, from their belief that his annotations were an injury to the book, and from their desire to treat the complainant liberally, and authorize and enable him to use his notes in any new and original work he might desire to publish in America, and therefore to make no use of them inconsistent therewith. Conscious that he was performing this duty faithfully, which agreed also with his own taste and judgment, and not being the legal or business adviser of the said representatives, he did not think it his duty, and it was not his desire, to charge his mind with the history of the relations between the complainant and the said representatives, which he fully understood involved no question of law that could possibly affect him, but presented only questions of a private character between the said parties, to be settled by them, on private considerations, and which would not be for the adjudication of public tribunals. But the respondent considered that he did his whole duty to all concerned, if he annotated the work in the manner above described. Since this suit, he has made further examinations in order to answer thereto, and has, in this his Answer, discriminated between the knowledge he had when he undertook the work, and that which he acquired before finishing it, and that which he has acquired since this suit was brought.

And this respondent denies all manner of unlawful confederacies with which he is charged in the bill, and all charges of inequitable acts or

intentions, without this, that any other matter or thing in said bill alleged, necessary for this respondent to answer to, and not herein sufficiently answered to, is true to the knowledge and belief of the respondent. All which matters and things this respondent is ready to maintain and prove as this Court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Rich H. Dana Jr

Solicitor for Counsel

United States of America
District of Massachusetts
Sworn to this eighth day of
February A.D. 1867
Before me
Winslow Warren Jr
U. S. Commissioner



U. S. Circuit Court
Dist of Massachusetts } In Equity

Laurence vs Dana et als

And now the said Martha B. Wheaton by leave of Court amends her answer by adding as follows:

That since the filing of her former answer, the said complainant has been examined as a witness in this cause, and has produced with his deposition divers letters in relation to the publication of the said edition of 1863, and its republication by said Brockhaus in Europe, and the payment to be made to the said Mrs Wheaton, and this defendant says that although the following passages of her former answer viz as they appear on the 28th page of the printed records of this cause are erroneous: viz, "that the delay in the said "payment and in the fulfilment by the said "Brockhaus of the honorary obligation in the premises "which he had voluntarily assumed, was solely due

" to, and was caused by the acts of the
" complainant," and also "That the said complainant
" afterwards refused to permit this to be done,
" and to allow the said Catherine Wheaton to
" carry out the said agreement with the said
" Brockhaus, and to transmit the said proof sheets,
" and endeavoured to hinder, thwart, impede and
" delay her in so doing," and which passages she
therefore asks leave of Court to strike out, yet
upon information and belief obtained and derived
from the said deposition of said complainant,
and the said letters, this defendant alleges that
the said complainant, at the time when the said
Brockhaus had received the advance sheets of
the edition of 1863, and was ready to pay the
said sum of 6000 pounds to this respondent,
did, for the purpose of obtaining from the
said Catherine Wheaton the pretended agreement
in said bill mentioned, falsely allege to the
said Catherine Wheaton, and to this defendant
that the said Brockhaus would not pay the
same without his the complainant's consent,
and falsely alleged that an consideration

for said payment, it had been agreed between himself and the said Buckhaus, that the said edition of 1863 was to be thoroughly revised, which would take four six months to a year, and the said payment would be made only upon his the complainants undertaking to make such revision, and that the said Catherine Wheaton and this defendant, in ignorance of the facts and induced solely by such false representations, did thereupon enter into the negotiations in said bill alleged to have taken place between the said Catharine Wheaton and said complainant, and this defendant submits to the Court here, that if the said negotiations resulted in an agreement which a Court of Equity would otherwise enforce (which this defendant denies) yet that the said agreement, if any such was ever perfected and is still in force, both which said respondent denies, by reason of said false and fraudulent allegations of the complainant in procuring the same, cannot be enforced by a Court of Equity.

And this defendant by leave as aforesaid further answers her answer as follows:

By striking out from her said answer each and every part thereof which avers or admits that the notes and memoir in said editions of said Elements published in the year 1855 and 1863 or either of said editions so far as they contain matter not contained in the previous editions of said Wheaton's Elements published in Philadelphia were duly copyrighted by said Catharine Wheaton and by adding to her said answer the words following: This defendant upon her information obtained since her former answer and belief thereon arising says that although true it is that the said Catherine Wheaton and the said Lawrence during all the negotiations mentioned or referred to in said bill and answer and up to the time of the filing of said bill did understand and believe, that the notes of said Lawrence and the memoir of said Henry Wheaton published in the said editions of the said Elements published in the year 1855 and 1863 and both of said editions so far as they contained matter not contained in the previous editions of Wheaton's Elements

published in Philadelphia and also so far as they contained matters already published in said editions were duly copyrighted by said Catherine Wheaton and that the copyrights thereof are operative and valid yet that in law and fact as she is advised no part thereof was duly copyrighted by the said Catherine Wheaton by any copyright purporting to be taken by said Catherine in either of said editions or by any other act or thing by her alone in relation to said editions nor was said Catherine legally entitled to take said copyright in either of said editions as proprietor of the contributions of the complainant thereto by reason thereof and of the act and omissions of said Catherine Wheaton in relation to said copyrights specified in the complainants bill and which this defendant admits there was not at any time during said negotiations any valid and existing copyright in any of the complainants said contributions to either of said editions and this defendant submits to

the Court that all the negotiations referred to in the complainants said bill were founded upon a mistake common to both the parties as to the character and existence of the subject matter of such negotiations and that if the same resulted in any agreement which a Court of Equity would otherwise enforce (which this respondent denies) that such agreement if any such agreement was ever perfected and is still in force both which this respondent denies is by reason of this mistake wholly void.

Lawrence
in Egypt

Dana Stark.

Amendment to Answer of
Martha B. Wheaton.
Submitted with Motion
Oct. 30th 1867.

Circuit Court of the United States.

District of Massachusetts ss. April 5. 1869.

William F. Laurens v. R. K. Dana Jr. & al.

In the above entitled cause the respondents move the Court, that the printed document filed by the complainant entitled "Closing Argument for the Complainant on the Question of Piracy." be ordered to be removed from the files.—

And they assign for their motion the following grounds.

That under the order of the Court passed in this cause November 11th. 1868. whereby these respondents ask leave to reply, the complainant was entitled to present a closing argument in writing, upon the point of infringement or piracy, upon which point he had already submitted an oral argument and printed brief, which the respondents had answered in writing, in pursuance of said order: and that the printed document the subject of this motion, purports to be filed under said order as the closing argument of the complainant.—

That that said document is not in fact confined to the limits proper to a closing argument: but on the contrary

over

1- That it contains new matter not admissible in a closing argument.

2.- That it contains such a new and different presentation of the facts and law applicable thereto from that contained in the opening argument and brief of the complainant, and such material modification of the arguments therein presented as to constitute an entire recasting of the complainants case, such as would if admissible at all entitle the respondent to make further reply thereto.

3- That such new matter and recast and modified arguments and presentations of law and fact are so intermingled and combined in said document with those portions of it which are properly admissible as to render it impossible for the respondents to discriminate between them, or to apply for leave to strike out ~~or~~ specially to reply to such objectionable portions of the document.

4.- If the Court shall use the complainants new argument the references in the argument for Mr. Dana will become useless, as they are necessarily made to the page section and paragraph of the complainants brief.-

The Court will find it substantially impossible to make any proper use of the argument for Mr. Dana, in connection with the said new argument, as not only the

Pages and sections, but all the orders and arrangements are changed; and if the Court should allow the said new argument to remain, and give the respondent the right to reply to it, the same difficulty will be incurred by this counsel.

Wm. Wells & R. L. Jones

Assistant Counsel
for Wells, Bowne & Co

T. K. Lothrop
for Miss Wheaton

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William B. Lawrence

in Eqr.

Richard H. Dana Jr et al

No.

U.S.C.
Mass. Dist. } Sept. 29th 1868

Filed by order of Court

Atte: John G. Hutson
Clerk

Circuit Court of the United States,

DISTRICT OF MASSACHUSETTS ss.

WILLIAM B. LAWRENCE *vs.* RICHARD H. DANA, JR., ET ALS.

In Equity.

ANSWER OF MARTHA B. WHEATON.

To the Honorable the Judges of the Circuit Court of the United States within and for the District of Massachusetts.

The answer of Martha B. Wheaton, one of the respondents to the bill of complaint of William Beach Lawrence, complainant.

This respondent, saving and at all times reserving to herself all right of exception to the said bill of complaint for its manifold errors and imperfections, for answer thereto, or to so much thereof as she is advised that it is material for her to answer, respectfully sheweth:—

She admits that the said Henry Wheaton named in said bill was the author of a certain treatise entitled Elements of International Law, and that he published the same during his lifetime, as alleged in said bill, in England and the United States, and also in French at Leipsic, and that he duly copyrighted the same in the United States, and that he died in the year 1848.

She admits that the said Henry Wheaton, at his death, left a widow, the said Catharine Wheaton, named in said bill, and two daughters, of whom this respondent is one, and that the said Catharine has since died; and she says that Robert Wheaton was duly appointed administrator of the said Henry Wheaton, and thereafter died, and that Francis E. Parker

was after said Robert's death duly appointed and qualified as administrator *de bonis non* of the estate of said Henry, and that no distribution of said Henry's estate has ever been made, and that whatsoever legal or equitable rights vested under these circumstances in the said Catharine Wheaton in the said treatise of said Henry Wheaton, and in the various editions thereof, and in the copyrights of the same, have come to and are vested in this respondent.

But whether or not there no longer existed, on the first day of January in the year 1865, a valid copyright in the text of the edition of said treatise published in 1836, as stated in said bill, this respondent says she does not know; that she has always understood and believed that there was such a valid copyright, and never knew it to be doubted or questioned until the filing of the said complainant's bill; that she is advised that the allegations of the said bill in this behalf are not material to the case of the complainant as stated in said bill, and that it is not necessary for her to make any other or further answer thereto, and she does not admit the same, but leaves the complainant to the proof thereof, if material.

And this respondent further answering says, that the text of the said edition of said treatise, published in Philadelphia in 1846, and then duly copyrighted, was thoroughly revised and corrected by the said Henry Wheaton, and was considered by him as in fact a new work, and was so copyrighted, and that the copyright thereof is still subsisting and valid.

She admits that, after the death of the said Henry Wheaton, the said Catharine, during her lifetime, published editions of the said treatise, as alleged in said bill, in the years 1855 and 1863, and that notes to the said editions of 1855 and 1863, including a memoir of the said Henry Wheaton, were composed by the complainant, and that the said editions, including as well the said treatise as the said notes and memoir, were duly copyrighted by the said Catharine Wheaton in her own name; but she denies that the said notes, including the said memoir, published in said edition of 1855, were composed by the said complainant, at the request of the said Catharine, and avers that the said complainant composed and prepared the said notes and memoir at his own suggestion and by his own desire, and says that his editorship and connection with said edition of 1863 naturally arose from his connection with that of 1855;

and she denies that the said complainant was ever the author of any part of the text of said treatise in either of said editions; and avers that the said Henry Wheaton was the author of the whole of the text of the said treatise in the said editions, and that all of said text in said editions was composed by him; and as to the index to the said edition of 1863, mentioned in the said bill of complaint, she avers that the same was prepared by some person other than the complainant, at the expense of the said Catharine Wheaton, and was paid for by her, and not by the said complainant.

And this respondent further answering denies, that the purpose of the said complainant in preparing the said notes and memoir was, as alleged in said bill, to make the said treatise more widely known; and avers, that before the publication of either of the said editions the said treatise had been published nearly twenty years, had appeared in five different editions, in three countries and in two languages, and was universally recognized in the United States, in England, and over the whole continent of Europe, as a standard work upon the subjects discussed in it, inferior to none in its learning, ability, and research, and that the said Henry Wheaton was equally well known to all persons conversant with the subjects discussed in this book and with the public history of this country, as an able lawyer, a distinguished statesman and a ripe scholar; and she avers that the purpose of the said complainant in offering to edit and in editing the said treatise as aforesaid was not, as he alleges, to make the book more widely known, but was to use the opportunity thus afforded him of making himself known, and of gaining for himself a reputation from the mere association of his name — as a writer on public law — with that of so distinguished an author as the said Henry Wheaton.

And this respondent denies that the copyrights of the said editions of 1855 and 1863 were taken out by the said Catharine Wheaton for the use and benefit of the said complainant, or under any such arrangement or understanding with him, or upon any trust for him, as alleged in said bill; and avers that the said copyrights were taken out by the said Catharine Wheaton with the knowledge and consent of the complainant, and by his agreement, for her own sole and exclusive use and benefit; that the complainant, from time to time and until after the publication of said edition of 1863, repeatedly and uniformly declared that his

labors therein were for the pecuniary benefit of said Catharine Wheaton, and not in any way for his own, and repeatedly and uniformly recognized and admitted her title and interest in the said copyright as the sole owner thereof, as well in the said treatise as in the said notes composed by said complainant as aforesaid and published therein, and repeatedly and uniformly disclaimed any pecuniary interest, or any interest therein, except such reputation as he might acquire as aforesaid, from the association of his name as an editor of the said book with that of the said Henry Wheaton.

And this respondent, upon information and belief, admits that the said complainant did, at the request of said Henry Wheaton, negotiate with Messrs. Lea & Blanchard, named in said bill for the publication of the edition of said treatise which appeared in 1846, and did deliver to them the manuscript of said edition, which the said Wheaton had forwarded from Europe to the address of the complainant; but she denies that the said Henry Wheaton ever, in any other wise than as just stated, entrusted the complainant with the manuscript of said treatise, or that he ever authorized the complainant to make any corrections therein.

And this respondent further answering says that, in the spring of the year 1860, the said complainant being in Europe, and learning that the said Brockhaus named in said bill, and who had published the French edition of the Elements of International Law in the lifetime of the said Henry Wheaton, in 1848, and had paid the said Henry Wheaton therefor, had published other French editions of the said treatise after the said edition of 1848, without compensation to the representatives of the said Henry Wheaton therefor, wrote to the said Brockhaus voluntarily, and without any authority from the representatives of said Henry Wheaton, charging him with a violation of their legal rights by said publication, and claiming damages therefor on their behalf; that the said Brockhaus thereupon replied, denying that the said representatives of said Henry Wheaton had any legal rights in the premises, but saying that the said editions had been published by him without any knowledge that any representatives or descendants of said Henry Wheaton were living, and that he recognized an honorary obligation to them in the premises, which he was willing, and offered to fulfil by the payment to them of a reasonable sum of money for the said editions of said treatise which he had already published, and for such preference as they could

give in any future continental edition of said work. That the complainant communicated to the said Catharine Wheaton and to this respondent his action in the premises, and the reply of said Brockhaus, and that the negotiations begun by this correspondence at last resulted, after more than three years' delay, in the payment to said Catharine Wheaton by said Brockhaus of the sum of six thousand francs, from which sum, at the then rate of exchange, she realized fourteen hundred and sixty-five dollars and fifty-nine cents; That the delay in the said payment, and in the fulfilment by the said Brockhaus of the honorary obligation in the premises which he had voluntarily assumed, was solely due to, and was caused by the acts of the complainant; That in the opening of the said correspondence with said Brockhaus the complainant repeatedly declared, as well to the said Brockhaus, as to the said Catharine Wheaton and to this respondent, that his intervention in the premises was solely for their benefit, and that he had not any pecuniary interest, or any interest whatsoever therein; and it was a part of the agreement between the said Catharine Wheaton and the said Brockhaus, originally made by the said Catharine with the full knowledge and consent of the complainant, and at his suggestion, that the said Catharine should cause copies of the proof-sheets of the said edition of 1863, including the notes thereto, which were then preparing for publication, to be transmitted to the said Brockhaus for translation and publication; That the said complainant afterwards refused to permit this to be done, and to allow the said Catharine Wheaton to carry out the said agreement with the said Brockhaus, and to transmit the said proof-sheets, and endeavored to hinder, thwart, impede and delay her in so doing, and to prevent and delay her receiving the said money from said Brockhaus, and so conducted as to induce the said Brockhaus to believe, that he had and claimed an interest in the said edition separate from, and hostile to that of the said Catharine Wheaton, and which would not be satisfied by any payment to her, except with the assent of the complainant and upon terms prescribed by him, and also so conducted as to induce the said Wheatons to believe that the said Brockhaus would not pay them the sum of six thousand francs or any sum whatever, except through the means and with the consent of the complainant, and upon their compliance with such terms and

conditions as the complainant might prescribe; That the said Catharine Wheaton and this respondent were at this time, as the said complainant well knew, in very straitened and necessitous circumstances, and had urgent and pressing need of the said money, and the said Catharine was aged and infirm both in body and mind, and from her age and infirmities peculiarly sensitive to anxiety and distress; yet the said complainant, knowing these facts, and knowing that the said Broekhaus had long before acknowledged his honorary obligation in the premises and agreed to pay therefor, induced the said Wheatons to believe as aforesaid, and harassed and distressed the said Catharine by his refusals and delays in the premises, and demanded of her, as the condition of his said consent, her assent to a memorandum of an imperfect agreement, a copy of which is set forth in said bill, to be afterwards completed and reduced to form as hereinafter stated; and the said Catharine thereupon, and under these circumstances, and induced as aforesaid, assented to the same.

And this respondent further answering says, that the said complainant may have intended by the said memorandum, as alleged in said bill, to practically secure to himself the complete and exclusive control of all future editions of said Wheaton's Elements, and may have assented to and accepted said agreement upon that belief and understanding, as alleged in said bill. But this respondent denies that the said Catharine Wheaton ever assented or agreed to the same with any such intention or understanding; and this respondent avers that the said complainant never represented, or stated, or suggested or hinted that he had any such purpose or understanding in asking for, assenting to and receiving the said memorandum, or that he believed it susceptible of any such construction as alleged in said bill, but that on the contrary he represented, as hereinafter stated, that his desire and purpose in and by the said memorandum was to obtain from the said Catharine the right to publish, as hereinafter stated, the notes composed by him, and printed in said edition of 1863, and her agreement not to print the same without his consent. And this respondent submits to this Court that, if the purpose of the said complainant in exacting this memorandum was to secure to himself the complete and exclusive control of all future editions of said Wheaton's Elements, as he alleges in his bill, and if the said memorandum would have been effectual for such pur-

pose, and operative and binding upon this respondent, both which this respondent denies, that then the said memorandum was obtained from the said Catharine Wheaton by and through the aforesaid fraudulent representations and concealments of the complainant, and would be therefore wholly inoperative and void for any and all purposes.

And this respondent further answering the said bill in this behalf says, that the said complainant well knew, at the time that said interviews and negotiations were had, that the said Wheatons were dissatisfied with the complainant as an editor of the said treatise, partly, among other reasons, because of his delays in the preparation of said edition of 1863, partly because of the great expense which his manner of editing the same had caused to the said Wheatons, as the complainant well knew, and more especially because of his insisting, in total disregard of the feelings and wishes of the said Wheatons, and in defiance of their earnest, repeated, and persistent remonstrances, and at a time when they could not prevent it, in changing the title of the said edition, and calling the said edition Lawrence's Wheaton. And the complainant well knew when said interviews and negotiations were had, that any connection between himself and the said Wheatons, so far as any future editions of said treatise were concerned, was no longer possible; and it was then assumed and admitted by all parties, as appears from the said memorandum, that all such connection was at an end, and that any future editions of the said treatise which the said Wheatons might publish or cause to be published, would be edited and annotated by some person other than the complainant. And the said complainant in the said interviews and negotiations repeatedly and uniformly recognized and admitted the copyright, and the legal and equitable title and interest of the said Catharine in all the text of the said treatise and in all the editions thereof, as well as in all the notes, including the memoir and appendices composed and written by the said complainant, and published in the said editions of 1855 and 1863, but claimed that there were in the said editions certain notes composed and written by him on various topics of international law, and that there was a moral and honorary obligation on the part of the said Catharine not to print in any future edition of said treatise, to be edited by some person other than said complainant, such notes so composed and written by him as aforesaid, and also to permit the said

complainant at some future time, — when, as stated in said bill, the pecuniary interests of the said Wheatons in the said edition of 1863, which all parties then supposed to be of value, would no longer be injured, and when the rights of the publishers of said edition under her contract with them, and of which the said complainant had knowledge, would not be affected thereby, — to print said notes so composed and written by him, in such form as he might desire, separate and apart from the said treatise.

And this respondent denies that the said complainant ever suggested or intimated any desire or intention to print the said notes at any time in connection with said treatise, or claimed any right so to do, or that the said Catharine or this respondent ever assented thereto, or that he then claimed any right or interest in the said editions, or in any matters contained therein, or in any notes, except such moral and honorary right as aforesaid in said notes so composed by him as aforesaid; and especially this respondent denies that the said complainant ever at any time during such interviews or negotiations claimed any interest whatever in any citations or references to any other works, pamphlets, documents, gazettes, or newspapers therein to be found.

And this respondent further answering says, that the said memorandum was not, and was not intended or regarded by the said complainant or the said Catharine Wheaton, as a full, final and perfect instrument, embracing all the elements and details of the agreement of the said parties, but that the said parties contemplated, and the said memorandum provided for, the execution and delivery of a more perfect and formal instrument, as stated in said bill.

That thereafterwards, during several succeeding months, various negotiations were had between the said Catharine Wheaton and the complainant in relation to perfecting the said agreement, and to putting the same in a form which should embrace the views of both parties at the time said memorandum was made; and various propositions were made by the said complainant in relation thereto, as being understood by him to be embraced in said agreement so made between them on the fourteenth day of June, 1863, to which the said Catharine Wheaton refused to consent; and the parties having failed to agree as to what was the true understanding and intent of the said arrangement, the complainant thereupon finally concluded to relinquish and abandon any agreement

whatsoever in the premises, and notified the said Catharine Wheaton of his said relinquishment and abandonment.

And this respondent further answering says, that shortly after the publication of said edition of 1863, grave objections were stated in public quarters to the notes of said complainant therein, that the said notes were severely criticized by the press of this country, and that a leading English writer on international law publicly printed, as his opinion of them, that they only embarrassed and confused the text to which they were appended, and by their looseness and inaccuracy tended to mislead, rather than enlighten, the student of Wheaton; that these and other objections and criticisms of said notes, the said Wheatons feared and were advised, would be likely seriously to interfere with the permanent value and lasting reputation of said treatise, and ~~which~~ therefore, in their opinion, rendered a new edition of the said treatise, under the supervision of some competent and proper person, and free from the said notes of said Lawrence, advisable.

That thereupon, and after the said complainant had abandoned and relinquished his aforesaid agreement, and had so notified the said Catharine Wheaton, the said Catharine, in full reliance on such relinquishment and abandonment, endeavored to obtain some person of learning and fitness to prepare such edition, and the said Wheatons were advised that the said respondent Dana was eminently such a person: That the said Wheatons thereupon applied to the said Dana, whom they had long and well known, and with whom they had been for many years on terms of intimacy and friendship, and urged him to prepare such an edition with proper notes; and that the said Dana, after much hesitation, with considerable reluctance, and mainly from motives of friendship and regard for the said Wheatons, at last consented to edit said treatise.

And the said Wheatons thereafter, in full reliance as aforesaid upon the complainant's relinquishment and abandonment of said agreement, contracted for the publication of said edition, to be edited by said Dana, and the said edition was thereupon, as this respondent is informed, duly advertised as in process of preparation, and when completed, was duly published. And the said complainant never had any communication with the said Catharine Wheaton or with any of these respondents upon the subject matter of said agreement for more than two years after its

relinquishment and abandonment as aforesaid, and never during this whole period made any suggestion or claim that the said agreement had not been abandoned and relinquished as aforesaid, and not until long after the said Wheatons had, upon the faith of said abandonment and relinquishment, made said contracts for the editing and publishing of said eighth edition of said treatise, and had incurred large expenditures thereunder, and until the said eighth edition had long been in preparation, and was nearly ready for the press.

And this respondent, for herself, denies all manner of concealment or intention of concealment from the said complainant, as alleged in said bill, either by the said Catharine Wheaton or herself, and denies all and every charge of fraud, or of intent to defraud the said complainant, on the part of herself or of the said Catharine Wheaton, as alleged in said bill, and all and every charge in said bill of any combination or conspiracy on the part of herself or of the said Catharine Wheaton with the other respondents or any of them with intent in anywise to injure or defraud the complainant.

And this respondent further answering says, that the said negotiations were begun with said Dana shortly after the abandonment and relinqishment of said agreement by said complainant, and more than two years before the publication of said eighth edition; and that the said Dana immediately began his labors in the preparation of the same, and continued the same with great diligence up to the month of July 1866.

And this respondent, further answering, says: that after his aforesaid abandonment and relinquishment of said agreement by the complainant, and at the time of the said negotiations with said Dana, the said Catharine Wheaton understood and believed that she had the sole legal and equitable title in the edition of 1863, as well in the said notes of said Lawrence, and in all the matter contributed by him thereto, as in the text thereof, and understood and believed, that the question whether she would publish these notes or any part of them in said eighth edition, or in any edition of said Wheaton was to be determined by her own judgment, upon consideration of her pecuniary interests in any such edition, her relations with the complainant, and such other like considerations as might influence her, but that it did not involve any matter cognizable by a judicial tribunal, or subject to its decision. And

in the exercise of this judgment, deeming it best for her pecuniary interest therein, to dissever the said treatise and the work of the said Henry Wheaton, as thoroughly as possible, from the notes of the said complainant, and desirous to observe the spirit of said agreement as she understood it, notwithstanding its abandonment and relinquishment by said complainant, and also every honorary obligation which she might owe him, — although the said Catharine then believed, as this respondent, upon instruction and advice now believes, and has herein before averred, that the said complainant had not then, and has not now any legal rights in the premises, — she at that time, for the reasons just stated and for no other, requested the said Dana not to print the said memoir of Henry Wheaton, contained in said edition of 1863, or any note of the said complainant published therein. And with this request, this respondent is informed and believes, and thereupon avers, that the said Dana has in said eighth edition fully complied, and that the said eighth edition does not contain the said memoir or any portion of it, or any note or a part of a note composed by said Lawrence, and published in said edition of 1863, or any matter composed by said Lawrence and published in said edition of 1863; and upon information and belief she denies that in the said eighth edition any note or matter composed by said Lawrence and published in said editions of 1855 and of 1863 has been copied and pirated as alleged in said bill.

And this respondent says she is informed and believes that the said publishers do advertise the said edition of said treatise annotated by the said Dana as the eighth edition thereof, and she avers that they do so advertise it, because it is in fact the eighth edition of said treatise, but she denies that they do so to mislead the public by means of any reputation which the said complainant may have acquired, or that they ever represented to any one that it contained any annotations of the complainant. And she alleges, that so far from making any such representations, it is distinctly stated in the preface to such edition, that the notes of the complainant form no part of it. And she denies that the said publishers have ever represented that any part of the text of said treatise had been altered in said eighth edition, or was the composition of any person other than the said Henry Wheaton; but she avers that the text of said treatise in said eighth edition has been revised by the said respondent Dana in this, that he

has, at the expense of much labor and with considerable skill and judgment, made new divisions thereof for the greater convenience of reference, and that he has also enriched the said eighth edition with many new and original notes.

And this respondent says that the said complainant, in the edition of 1863, had printed a full, prolix and elaborate memoir of the said Henry Wheaton, and had in his annotations quoted at great length passages from newspapers, pamphlets, and other ephemeral publications, which greatly added to the bulk and cost of the book without any corresponding increase in its value, and that it had been the purpose of the said complainant in the said notes, so far as the same may be educed from the notes themselves, to embody therein all the materials for a full and complete history of the growth and progress of International Law since the publication of the original treatise, instead of confining these to such matters as might come properly within the province of a treatise on the Elements of International Law, and that this also contributed to swell the notes, and to increase the cost of the volume ; and that besides the other objections to the said edition already stated and referred to in this answer, objections from this source were believed by the said Catharine Wheaton to seriously injure the character of the work and to affect its sales; and that a part of the purpose of the said Catharine Wheaton in causing the said eighth edition to be prepared and published, was to remove these objections, by omitting the said memoir and the said notes of said Lawrence, and by the publication of new and original notes of a different scope, not open to these objections, which should present in a proper and concise form such points and principles in the law of nations as have been elucidated or settled by the judgments of the judicial tribunals, or the great public discussions and acts of various countries since the publication of the last edition of said treatise, which appeared in the lifetime of the said Henry Wheaton. That this purpose was well understood by the said respondent, Dana, and, as this respondent believes, was constantly kept in view, and has been faithfully carried out by him in his said notes to the said eighth edition.

And this respondent denies all and all manner of unlawful combination and confederacy wherewith she is by the said bill charged, without this, that any other matter, cause or thing, in the said complainant's said bill of complaint contained, material or necessary for this

respondent to make answer unto, and not herein and hereby well and, sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable Court shall direct; and humbly prays to be hence dismissed with her reasonable costs and charges, in this behalf most wrongfully sustained.

Martha B. Wheaton

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T. K. Lothrop

Solicitor & of Counsel

for Miss Martha B. Wheaton

U.S. America

Massachusetts District ss. January 22d 1867

Subscribed and Sworn to before me

Wm U. Foster

Com. U.S. Circuit Court

Mass. Dist.

Wm B. Lawrence Jr. &
vs.
R. H. Dana Jr et al

Answer of
Martha B. Wheaton

U.S.C.C.
Mass. Dist } January 22d 1861
Filed in Clerk's Office
Att:
John G. Gibson

ANSWER

Of Charles C. Little, Augustus Flagg, John Bartlett and Henry T. Miles, defendants, to the Bill of Complaint of William B. Lawrence, complainant.

These defendants reserving all right of exception to the said bill of complaint, for answer thereto, say:

1. They admit that Henry Wheaton, in said bill of complaint mentioned, wrote and composed the book or treatise entitled Elements of International Law, and published the first, second, third and fourth editions thereof respectively at the times and in the places and under the titles in said bill of complaint specified, and that he died in 1848, but whether in the edition published at Leipzig in 1848, as mentioned in said bill of complaint, the said Wheaton inserted or published, in the text or in the notes, many or any material new matters not at any time published or written by him in the English language, these defendants are not informed, save by said bill of complaint, and so can neither admit nor deny, but leave the complainant to prove the same as he may be advised.

2. They admit that the complainant prepared a new edition of said work entitled as in said bill of complaint mentioned, which edition was published in 1855, at Boston, by Little, Brown & Company, and that so far as it contained matters not before published in this country, it was copyrighted to the said Catharine Wheaton, as proprietor thereof, she acting in the premises with the knowledge and by the consent and request of the complainant, but they do not admit, but upon information and belief deny that the preparation of such edition by the complainant was undertaken upon the request of the said Mrs. Wheaton, and say

that it was undertaken upon the suggestion of the complainant that he should do so, to which suggestion the said Mrs. Wheaton acceded, and they farther say upon information and belief that the said edition was not undertaken until the said Philadelphia edition of 1846 was substantially exhausted, only fifty copies or thereabouts remaining on hand.

3. They admit that the proceeds and profits arising from the contract with the said publishers respecting the publication of said edition were enjoyed by the said Catharine Wheaton, but they are informed and believe that the exclusive right in said new matter in said edition was never duly assigned to the said Mrs. Wheaton, and they are advised and believe, and so say, that said new matter was never duly copyrighted according to law by the said Catharine Wheaton as proprietor thereof, as alleged in said bill of complaint.

4. And, as to the edition stated in the bill of complaint to have been published by Little, Brown & Co. in 1863, these defendants admit that the complainant prepared said other annotations for said edition and that the same were copyrighted by the said Mrs. Wheaton as proprietor thereof, she acting in the premises with the knowledge and by the consent and request of the complainant; and, upon information and belief, they say that the preparation of such edition by the complainant was undertaken upon the request of said Mrs. Wheaton, who made such request because the fact that the complainant had edited said previous edition made it proper that he should edit the next one (no reason then appearing to the contrary), and a matter of delicacy on her part to resort to any other editor; and they are informed and believe that the exclusive right in said new annotations for said edition was not duly assigned to the said Mrs. Wheaton, and they are advised and believe, and so say, that said new matter was never duly copyrighted according to law by the said Catharine Wheaton as proprietor thereof, as alleged in said bill of complaint.

5. And these defendants upon information and belief say that in all the transactions between the complainant and the said Mrs. Wheaton, relating to, and preceding the publication of the said editions of 1855 and 1863, and in all his interviews and correspondence with her, or

those acting in her behalf during the preparation of the edition of 1863, the complainant professed and declared that he desired no remuneration to himself for any labor of his own, in editing said Wheaton's Elements of International Law, beyond the reward which he would have from connecting his name publicly, as a writer upon international law, with that of the said Wheaton, and from the consciousness of having been of service to his family; and that said editorial labor of the complainant was bestowed by him gratuitously, and without any claim for pecuniary compensation whatever, and was accepted by said Wheatons as so bestowed, and these defendants (not admitting that if the complainant had not so professed and declared, the said Mrs. Wheaton would have had no other or farther beneficial interest in said annotations and additions than a right to use the same in the said two annotated editions, but, as advised, maintaining the contrary thereof, and not admitting that the said Mrs. Wheaton's said copyrighting as proprietor was done duly and according to law, but as advised, maintaining the contrary thereof,) do on information and belief deny that it was ever understood or agreed by or between the said complainant and the said Mrs. Wheaton, that the beneficial interest in all or any part of the matter due to the complainant's labor or skill was as stated in the bill, or that the copyrights so taken out by said Mrs. Wheaton were taken out under any agreement, or held by said Mrs. Wheaton upon any trust whatever, and they say that they have never been informed, save by the bill of complaint, and do not now at all believe, that any such agreements or understandings between the complainant and Mrs. Wheaton as are in this behalf alleged in the bill of complaint, were ever had or made.

6. And these defendants, upon information and belief, say it is true as stated in the bill of complaint that before the year 1860, said Brockhaüs had published in Europe an edition or editions of Wheaton's Elements, without the knowledge or consent of the representatives of said Wheaton, and without any payment to them in the nature of copyright money, and they understand it to be true that in the absence of provision for any international copyright between the two countries, the said Brockhaüs had a strict legal right so to do; and they say that it may be literally true as stated in the bill, that said Brockhaüs con-

templated publishing further editions, as might suit his convenience or profit, without making any payment of the nature of copyright money therefor, but that the said Brockhaüs at any time contemplated the repudiation of the moral or honorary obligation he was under to pay the representatives of the said Wheaton a suitable sum for the editions which said Brockhaüs had published, and might publish abroad, these defendants upon information and belief deny, and aver that on the contrary, said Brockhaüs was always ready to recognize and fulfil said obligation, and that the payment of two thousand francs to Mr. Wheaton, as mentioned in the bill, was in itself not in the nature of copyright money, and was made mainly, if not wholly, upon the foot of such moral and honorary obligation.

7. And these defendants, upon information and belief, admit that in the year 1863, the complainant did make an agreement with said Brockhaüs, by which the complainant should furnish to said Brockhaüs a translation into French of the annotations prepared for the said American edition of 1863, revising them for European publication as he might see fit, and adding whatever might be necessary to make them complete down to the time of such publication, and that the said Brockhaüs at the same time agreed to pay to Mrs. Wheaton the sum of six thousand francs in full satisfaction of the moral or honorary obligation he was and would be under to Mrs. Wheaton (as the widow of Mr. Wheaton) in respect of said Brockhaüs's edition of Wheaton's Elements, published since 1848, and of certain future editions which he might publish thereof, and also to pay to the complainant the sum of four hundred and fifty dollars towards the necessary expense of translation, but they are informed and believe that as matter of fact no revision of or substantial addition to the American edition of 1863 (then ready for publication) was required or was made, but that the advance sheets of said edition were put directly into the hands of the translator, and that the expense of making such translation was not more than fifty cents per page, and that the remainder of the expense thereof, over and above the said four hundred and fifty dollars, was agreed to be paid by Mrs. Wheaton out of the money coming to her from said Brockhaüs as before mentioned, and upon information and belief they deny that the motive and object of the said Brockhaüs in entering into said agreement, and

agreeing to pay said money, were as stated in the bill of complaint, and deny that the said payment of six thousand francs was in whole or in considerable part agreed to, or was made by said Brockhaüs in consideration of anything done or to be done by the complainant; and on the contrary thereof they aver upon information and belief, that the said Brockhaüs did not know until informed by complainant's letters that there were any surviving relatives of Mr. Wheaton, and that as soon as he heard this fact, and it was suggested to him that it was proper to make them some honorary payment for the editions he had published abroad since 1848, he immediately acquiesced therein, and also in the propriety of making similar payment for the editions he might afterwards publish; and these defendants on information and belief say that as matter of fact the said payment of six thousand francs as to the greater part thereof was procured to be made by the mere representation to said Brockhaüs of existing facts in regard to the representatives of Mr. Wheaton's, and that as to the remainder thereof it was procured to be made either by the same considerations or by reason of promises and assurances as to furnishing new matter of the complainant and the time and manner of furnishing the same, which promises and assurances were not in fact fulfilled by the complainant; and from facts of which they are well informed, they believe and charge that the complainant, having ascertained the willingness of said Brockhaüs to deal liberally with the representatives of Mr. Wheaton in respect of past and future publications in Europe of editions of his Elements of International Law, induced said representatives to believe that no payment could be obtained from said Brockhaüs without his, the complainant's, mediation and upon his order, and induced said Brockhaüs to believe that he, the complainant, was acting purely in the interest of said representatives, and for no personal advantage of his own, and did then, knowing the needy condition of the said representatives, take advantage thereof to attempt to exact from them the agreement hereinafter next mentioned.

8. And these defendants believe, as informed by the bill of complaint and otherwise, that at this point of time, when the said Brockhaüs was ready to pay said six thousand francs, and the said representatives were in pressing need thereof, the complainant did announce to the said

representatives, or to the said Parsons, named in the bill, acting in their behalf, that he would undertake his said work in regard to the new Brockhaüs edition only on the condition that the entire copyright of said Wheaton's Elements, and also all honorary title thereto in Europe should be assigned to the complainant; but, upon information and belief, they say that the said Wheatons (representatives of said Henry Wheaton) or the said Parsons in their behalf, promptly refused to make or assent to any such assignment, but did (believing as aforesaid that they, the said Wheatons, were dependent upon the good will of the complainant and upon his influence with said Brockhaüs for obtaining the payment of which they were in such need as aforesaid) obtain the friendly offices of the said Parsons to make such arrangement with the complainant as should bring to them such payment without their making any further concession than the apparent facts should render proper or necessary.

9. The defendant Little says that as to the various matters which the bill alleges were well known to the said Wheatons and himself, as leading the complainant to the resolution to adopt the said course of conduct towards the said Wheatons, he is not informed of any, except that differences of opinion had arisen between himself and the said Wheatons on the one part, and the complainant on the other, as to the propriety of the very conspicuous use of the complainant's name on the American editions, and the expediency of inserting in said editions, without abridgment, the very prolix memoir of Mr. Wheaton, and the very voluminous statements and quotations, made in the notes, to which memoir and statements and quotations, as prepared by the complainant, the defendant Little and the Wheaton representatives attached much less value in comparison with the text than the said complainant did, as they added greatly to the cost of the book, and did not appear to add materially to its value for the use of the professional reader or student; with which provoking causes of the complainant's adoption of the course of conduct before mentioned, the defendant Little believes that he should mention also a difference of opinion as aforesaid, in regard to some trifling money charges, which the said complainant had been required to pay.

10. As to the negotiations before mentioned between the said Parsons and the complainant, and their result, these defendants upon information and belief admit that the memorandum dated June 14, 1863, and recited in the bill, was prepared by said Parsons, and that the said Miss Wheaton signed her own name thereto, and wrote the date, June 14, 1863, thereon, and caused the same to be delivered to the complainant; but whether she signed the same on behalf of herself, or to signify her own approval thereof, these defendants are not informed save by the bill of complaint, and can neither admit nor deny the same, and leave the complainant to prove the same as he may be advised; but that said memorandum was a final and concluded agreement, or was understood by the parties respectively to contain their whole agreement, they now, as more particularly hereafter, on information and belief deny.

11. And these defendants upon information and belief further say, that it may be true that the "plan devised" by the complainant was believed by the complainant to be "sufficient in view of the situation of the parties, and the nature and condition of the subject-matter, to practically give and secure" to him the "complete and exclusive control of all future editions of "Wheaton's Elements," and that he "assented to and accepted the said memorandum upon that belief and understanding;" but they are well informed and believe that no such understanding of the intent and meaning of the parties in making their agreement was shared by the said Wheatons, or either of them, or by the said Parsons; and these defendants themselves have never been informed and do not now believe that any such understanding existed between the parties to said transaction; but upon information and belief they say that at the time of said transaction the complainant did express, among other matters, the purpose and intent on his part following; that is to say, that whereas the complainant had put into the American editions of 1855 and 1863 of "Wheaton's Elements" much matter of his own composition in the shape of notes, to which, as before mentioned, he, the complainant, attached very great value, he intended to secure to himself by said agreement the exclusive control over such matter of his own composition in order that, on the one hand, whatever future American editions of Wheaton's Elements might be under the authority of the Wheaton representatives prepared

by any other editor than the complainant should be subject to the supposed disadvantage of the absence of said matter of the complainant's composition, and that, on the other hand, the complainant might be free to carry out an intention, which he declared he had partly formed, of composing an original work on International Law, in which the beforementioned matter of his own composition should be embodied: wherefore, these defendants aver that if said agreement was by the complainant procured to be made, with the design on his part that it should give him, as now alleged by him in his bill, the practical control over all future editions of "Wheaton's Elements," then said agreement was by the complainant fraudulently procured to be made; and they submit to the Court that the complainant is for this reason not entitled to receive any relief thereon in a Court of Equity.

12. And these defendants upon information and belief deny that it was ever suggested between the complainant and the said Wheatons or either of them, or the said Parsons, that any agreement between them had or should have or was intended to have any reference to any mere citations of cases, or collections of authorities or references, but that it was distinctly understood that it did and should cover only matter originally composed by the complainant.

13. And these defendants upon information and belief say, that apart from the evidence afforded by the language of the memorandum itself, and the admissions in the bill of complaint, it is true, as matter of fact, that the said memorandum was not intended to be a final or complete statement of the agreement between the parties, but that several details and provisions then agreed upon, and believed by both parties to be material, were omitted therefrom, and reserved by both parties for insertion in the formal agreement, which upon the payment of said Brockhaüs draft should be made between the parties, as provided in said memorandum; among which details or provisions was this, that no use by publication of complainant's said notes should be made in this country until the said American Edition of 1863 should have been exhausted.

14. And these defendants upon information and belief say, that the said Brockhaüs draft having been paid, the said Wheatons through said Parsons immediately tendered to the complainant a written instrument in pursuance, as aforesaid, of their said agreement, as understood on their part, which instrument was objected to by the complainant as being not in accordance with their said agreement, and discussion and negotiation ensued, running through several months, as to what had been really agreed upon by the parties, and as to what the terms of the said complete agreement should be, and that the said parties failing to agree upon the said subject, the said complainant did, after such discussions and negotiations, finally and absolutely relinquish and abandon all claim under said memorandum and agreement, and notify to the said Parsons and the said Wheatons his intention to that effect, and thereafterwards and in consequence thereof the said Wheatons, finding that grave objections were made in public quarters to certain notes written by the complainant and inserted in the edition of 1863, then just published, and that another edition was in immediate request, applied in succession to various persons believed to have the necessary skill and learning for the purpose to prepare such new edition, and at last succeeded in inducing the said Dana, mainly upon considerations of personal friendship, to undertake the preparation of the same. That soon thereafter and early in the year 1864, said Dana commenced his labors in this behalf, and continued the same with great diligence down to the time or about the time of its printing and publication, and that said edition was so prepared under an agreement made, after said complainant had as aforesaid relinquished and abandoned all claim in the premises, and in the early part of 1864, between said Dana and said Wheaton's representatives, that he should prepare the same, and that they should pay to him a certain sum by way of or towards compensation therefor; and this defendant Little of his own knowledge, and these other defendants upon information and belief, say, that he the said Little at the time of said agreement with said Dana, made an agreement, in behalf of his firm of Little, Brown & Co., with the said Wheaton representatives, to print and publish said edition when so prepared, and to pay to said Wheaton representatives certain copyright money therefor, and that upon the completion and publication of said edition

the said Little, Brown & Co. did, in fulfilment of the said agreement, pay to said Wheaton representatives in cash and notes said agreed copyright money; and this defendant Little of his own knowledge says that he, and upon information and belief says that the said Wheatons and the said Dana, did not, until after said agreements had been made, and after said edition had long been in course of preparation, and was nearly ready for the press, ever know or hear of any intimation of the complainant that he still made or would make any claim whatever, under the transactions before referred to between himself and the said Wheatons and the said Parsons; and this defendant Little therefore says, as to himself of his own knowledge, and as to said Wheatons and said Dana upon information and belief, that said edition of 1866 was contracted for, and in chief part prepared, in full reliance upon the fact that said Lawrence had relinquished and abandoned, and given notice as aforesaid that he relinquished and abandoned, all claim under said transactions, to interfere in any way with any use of anything embraced in said editions of 1855 or 1863, although said edition was prepared without, in fact, any use made of the complainant's said notes, both because it was believed as aforesaid that said notes would be not a benefit but an injury to the forthcoming edition, and because the said Wheatons preferred to conduct themselves according to the spirit of the agreement which they understood to have been made, notwithstanding that they and the complainant had failed to come to an agreement as to the terms thereof. And upon information and belief these defendants say that said Lawrence well knew that such agreements had been so made, and that said edition of 1866 was so preparing, and made no objection thereto until said edition was nealy ready for the press; and they are advised, and submit to the Court, that he cannot now be heard in a Court of Equity to assert any claim against them or the said Wheatons or the said Dana on account of said edition of 1866, based upon any agreement or attempted agreement between himself and said Wheatons and said Parsons as before mentioned.

15. And these defendants submit to the Court that if such transactions as aforesaid amount to a concluded agreement which would be otherwise binding upon the said Wheatons, and give any equitable title whatever to the complainant (the contrary whereof these defendants

will maintain), the complainant is not entitled to any relief thereupon in a Court of Equity, because, as before stated the same was obtained as these defendants are informed and believe by unconscientious means and contrivances of the complainant.

16. And these defendants deny that the complainant is the true or equitable owner of any matter embraced in the said editions of 1855 and 1863, and undertaken to be secured by copyright thereof, or that he is entitled to receive, or that the representatives or successors of the said Mrs. Wheaton are bound to execute or deliver to him, any deed of assignment whatever of said supposed copyright or of any right whatever thereunder.

17. And these defendants say that in so far as the complainant claims to be the equitable owner of the said copyrights taken out in 1855 and 1863 in the United States in the name of Mrs. Wheaton, for any matter contributed to said editions or either of them by any labors of the complainant, and seeks relief by virtue of such ownership, they are advised and will maintain that he is not entitled to such relief, because the exclusive right to said matter was not duly assigned to Mrs. Wheaton, and therefore could not be legally copyrighted to her, but such copyright and each of them as to such matter are wholly void.

18. And this defendant Little admits that he had knowledge of the transactions and agreements or attempted agreements hereinbefore by these defendants on information and belief admitted or averred to have been done and made, and of the said relinquishment and abandonment thereof by the complainant, and denies that he ever had any information of any such pretended claim of the complainant, as is set up in his bill, or of any other similar claims, until after the publication by these defendants of the edition complained of in the bill had been contracted for as aforesaid, and the edition was in press, and nearly ready for publication. And these defendants, Flagg, Bartlett and Miles each answering for himself denies that he had ever any knowledge or information whatever of any of the before mentioned transactions or agreements between the complainant and the said Wheatons and the said Parsons or either of them, until at or about the time of the

filing of the bill of complaint, and long after said publication had taken place.

19. And these defendants admit the publication by them of the said edition of Wheaton's Elements of 1866, with notes by Richard Henry Dana, Junior, defendant, but while they have never actually compared the said edition with those of 1855 and 1863 aforesaid, they do, on all the reliable information they have received, and according to their belief, deny that in said edition any unlawful or unjustifiable or piratical use whatever has been made of anything contained in any previous American edition of the same work, and particularly they deny as aforesaid that any matter composed by the complainant, or quoted by him in his said notes to previous editions, makes any part of their said edition of 1866, and upon information and belief, they further deny that any unlawful use has been therein made of any citations of cases or collections of references or authorities so made by the complainant, and generally they deny all and all manner of infringement or piracy with which they are charged in the bill of complaint. And they further say that the general scope and character of their said edition as to the notes is essentially distinct and different from the scope and character of the American editions of 1855 and 1863, prepared by the complainant, and they deny that their said eighth edition was intended to take the place of the complainant's said editions, except that as being a later, and intended to be a better, edition, it would in the ordinary course of events take the place of it, and they certainly believe that their said eighth edition was of a character to supersede said editions prepared by the complainant, and upon information and belief they aver that the editor, the said Dana, was particularly requested by said Miss Wheaton to omit from the book all that was distinctive or characteristic of said complainant's American editions in the belief that the more thoroughly this should be done the more effectually the new edition could be made what it was desired as aforesaid that it should be made, and this request they have every reason to believe and do believe the said Dana strictly fulfilled.

20. And these defendants deny all fraud, conspiracy and concealment charged in regard to the preparation and publication of their said

edition, and say that in consenting to such preparation and in said publication they and each of them acted in the belief that they had full and perfect right in law and equity so to do; which belief, upon subsequent investigation and information, and upon reading the complainant's bill, they still more strongly entertain; and this defendant Flagg, admitting that in or about the month of September 1865, he informed the complainant, in answer to a question by him, that quite a number of copies of the edition called in the bill "Lawrence's Wheaton" remained unsold, and that it sold only tolerably, says that such statement was true, but he denies that he in any way contrived any concealment from the complainant, then or at any other time, of any intentions or doings of himself or of his partners in the premises, but on the contrary thereof says that he believes, and these other defendants say that they believe, that at the time of said interview the complainant did know or had abundant reason to believe that said eighth edition of Wheaton's Elements was then in course of preparation.

21. And these defendants, and particularly the said Little, deny that they ever at any time made any threats to any publisher or did any acts to put an end to or frustrate any negotiations of the complainant with any publisher for the publication of a new edition of "Wheaton's Elements," although they have always maintained, and now maintain, that the complainant has no right at law or in equity to publish or cause to be published any new edition of Wheaton's Elements, or in any way use by publication any part of the text of said book in the United States.

Without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this Honorable Court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

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Charles C. Little

Augustus Flagg

John Bartlett.

Henry T. Wiles.

Wm. B. Lawrence
vs
~~Chas C. Little et als.~~
R. H. C. Dana Jr. et als.

in Eq.

Answer of
Charles C. Little et als

U.S.C.C.
Mass. Dist. } January 22 1866
Filed in Clerk's office
att: John G. Nelson

Circuit Court of the United States.

MASSACHUSETTS DISTRICT.

IN EQUITY.

WILLIAM B. LAWRENCE, Complainant,

v.

RICHARD H. DANA, Jr. et al., Respondents.

CLIFFORD AND LOWELL, JJ.

OPINION OF THE COURT,

DELIVERED SEPTEMBER 20, 1869.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 34 SCHOOL STREET.
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MASSACHUSETTS DISTRICT. MAY TERM, 1869.

CLIFFORD AND LOWELL, JJ.

WILLIAM B. LAWRENCE, IN EQUITY, *v.* RICHARD H. DANA, JR., CHARLES C. LITTLE, AUGUSTUS FLAGG, JOHN BARTLETT, HENRY T. MILES AND MARTHA B. WHEATON.

CLIFFORD, J.

Complainant alleges in substance and effect that Catharine Wheaton, deceased, widow of the late Henry Wheaton, in the year 1853, then in full life, requested him to prepare a new edition of Wheaton's Elements of International Law, and that he, in pursuance of that request, prepared such notes for that purpose as seemed to him fit, and also an appendix and introductory remarks, with a full and careful memoir of the life of the deceased author; that, so far as the edition contained matters not previously published in this country, it was duly copyrighted by the said Catharine as proprietor thereof; that the same was subsequently published by the firm of Little, Brown & Company, and that all the profits arising out of the contract with the publishers were enjoyed by the said Catharine as the complainant intended they should be when he undertook to prepare the edition; that he afterwards, in pursuance of a similar request from the same source, prepared other annotations of the same work, which were also copyrighted by the same person, and that they were published in 1863 by the same publishers; that he is advised and believes that the transactions as recited, in respect to those two editions, operated to convey to the said Catharine no other beneficial interest in the said annotations and additions to the work than the right to use the same in those editions; that in fact it was always understood and agreed by and between them that the beneficial interest in the same

except as aforesaid, belonged to the complainant, and that the copyrights were taken out and held in trust by the said Catharine in accordance with that understanding and agreement. Prior to that period, the author, as the complainant alleges, had caused four several editions of the work to be published, two at Philadelphia, one at London, and one in 1848 at Leipzig, in two volumes, by F. A. Brockhaüs, in the French language; that in the edition of 1848 the author inserted and published, both in the text and notes, many new matters never before published by him in the English language; that the author died in 1848; that the French edition was reprinted by the said Brockhaüs in 1853 and that the complainant in 1860 ascertained that the said Brockhaüs had published another edition of the work in French, without the knowledge or consent of the representatives of the author, and that he contemplated publishing further editions of the same without paying anything to those representatives for copyright; that in view of these circumstances, and at the request of the said Catharine, he commenced negotiations with the said Brockhaüs upon the subject; and he alleges that the result was, that the parties came to an agreement that the complainant should revise and translate his annotations and adapt the same for a work to be sold in Europe, making such additions thereto as should render the work as complete as possible down to the time of publication; that the representatives of the deceased author should give up all claim on the said Brockhaüs in respect to the editions published and to be published; and that in consideration thereof the said Brockhaüs agreed to pay to the said Catharine, if the complainant so directed, the sum of six thousand francs, together with the sum of four hundred and fifty dollars, to be paid to the complainant to defray in part the expenses to be incurred in preparing the translations; that the complainant, before the agreement was completed, stated to the said Catharine or her agent, Martha B. Wheaton, that he would do no more work on any book over which he did not possess exclusive control; that he would only undertake the work required of him in the proposed arrangement on the condition that the entire copyright should be assigned to him; that the said Catharine, manifesting a great desire to retain the legal title to the copyrights of the book, requested him to confer with Professor Parsons in her behalf, in order that some ar-

rangement might be made which should substantially secure to the complainant what he desired, and be at the same time acceptable to the said Catharine; and the complainant alleges that he assented to that proposition, that he had one or more interviews with Mr. Parsons, and made an agreement with him as to the title to the copyrights and other matters, as expressed in the memorandum set forth in the bill of complaint, as follows:

"MEMORANDUM.

Mr. Lawrence will write to Mr. Brockhaüs in terms to bring to Mrs. Wheaton the right to draw on Mr. Brockhaüs at once for 6000 francs. He will also endeavor to get from Mr. Brockhaüs as much as he can towards the actual expense of having the translation into French made here, and so much of that expense as he fails to get from Brockhaüs Mrs. Wheaton will pay from the proceeds of the draft on Brockhaüs. Mrs. Wheaton will, on the payment of her draft on Brockhaüs, agree formally to make no use of Mr. Lawrence's notes in a new edition without his written consent, and Mrs. Wheaton will give to Mr. Lawrence the right to make any use he wishes to of his own notes"; that the said Parsons, for the purpose of being more certain that the memorandum would be approved by the said Catharine, wrote on the same sheet of paper to the respondent, Martha B. Wheaton, that he and the complainant had come to a perfectly amicable result, as expressed generally in the memorandum, and suggested to her that she should make a copy of the same for herself, if the result was satisfactory; and the complainant also alleges that the said Martha afterwards, in behalf of her mother and herself, and to signify their approval of the result, signed the said memorandum, and wrote the date, "June 14, 1863," thereon, and caused the same to be delivered to the complainant. Additions were subsequently made to the agreement, and the terms of it were in some respects varied, as appears by the correspondence between the parties; but the complainant alleges that he is advised and believes that the amendments to the same do not vary any such parts of the same as relate to the copyrights in this country; and he also alleges that the consideration of the agreement of the said Brockhaüs to pay said amount to the said Catharine was the promise of the complainant to furnish new and additional notes for the future editions of the work, as was well

known and understood by the parties; that he, the complainant, wrote to said Brockhaüs, as agreed; that the letter was approved by the other parties, and was by the said Martha and Catharine sent to the said Brockhaüs, and that the said Catharine, on the seventeenth of June, 1863, drew a bill of exchange on him for the amount specified in the memorandum; and that the same, in consequence of said letter and of the promises and undertakings of the complainant, was duly honored and paid.

Theory of the complainant is, and he accordingly alleges, that there was not, on the first day of January, 1865, any valid subsisting copyrights of the editions published respectively in 1836 and 1846; that the copyrights of the editions published in 1855 and 1863 secured the exclusive right to the same only so far as those editions differed from the aforesaid antecedent editions; that it was a part of the agreement made through the agency of the said Parsons, that the said Catharine should execute and deliver to the complainant a formal instrument, securing to him all his rights in the premises, of such a nature as to admit of being recorded, as required by the acts of Congress relating to copyrights; and he avers that the other respondents had full notice and knowledge of the agreement, and that he, in a Court of Equity, by virtue of that agreement, is taken and deemed to be the owner and proprietor of the last mentioned copyrights, in and as to all matters contributed by him as aforesaid; and that, by reason thereof, the respondents are bound not to make any use of any such matters so contributed by him to either of the said editions of the said work. Based upon these and other allegations, as more fully set forth in the record, the claim of the complainant is, that he is in equity the exclusive owner and proprietor of the copyrights for all the matters which he contributed to those two editions; and he charges that the said firm of Little, Brown & Company procured and induced the said Martha, in her own behalf and that of her mother, to consent and agree that the said publishing firm of Little, Brown & Company should publish an edition of that work, and procure the same to be edited and notes to be prepared for the same by some person other than the complainant; that thereupon the said firm procured and employed Richard H. Dana, Jr., one of the respondents, to edit the proposed edition, and to prepare the notes as aforesaid; and the complainant further shows, that the respondents, without his consent, have caused the proposed edition to be printed, published

and publicly sold. Reference is also made to certain alleged pretences set up by the respondents; and the complainant prays for an account and for an injunction, and that the respondents may be decreed to surrender and deliver up all copies of the book on hand, and to make and deliver to the complainant a good and sufficient deed of the copyrights of 1855 and 1863, in accordance with his equitable title.

Questions of intrinsic importance and of great difficulty are presented for decision in respect to the title of the complainant, and as they are in their nature preliminary, they will be first considered. Briefly stated, his claim of title, considered broadly, is to the additions to and emendations of the text of the two editions as published under his supervision, to the memoir of the author as contained in those editions, to the annotations prepared by him and published in those editions, and to the arrangement of the same, and the mode in which they are therein combined and connected with the text, and to the indices as published in those editions. He rests his claim upon the following grounds, as substantially stated in the bill of complaint: First, upon a contract or agreement between Catharine Wheaton and himself, that she should make no use of his notes aforesaid in any new edition of the work without his written consent; and that she would convey to him, by a formal instrument, the right to make any use he might see fit to make of his own notes. Secondly, upon the ground that in the consideration of a Court of Equity, he is taken and deemed to be the owner and proprietor of the copyrights in and as to all the matters contributed by him and published in those two editions. Evidently, both claims, as presented, have respect to the agreement as expressed in the memorandum of June 14, 1863, and the subsequent correspondence upon that subject, as the first is founded in covenant or contract, and the second in an equitable title to the copyright, as derived from the original arrangement and by virtue of the agreement expressed in that written paper. Confirmation of that proposition is not needed, as the language employed in the stating part of the bill of complaint is too plain for controversy; but if it were not so, every vestige of ambiguity is removed by the principal prayers of the bill of complaint, which are for an injunction, and for an account, and for a good and sufficient deed conveying the legal title to the copyrights.

The respondents contend that the complainant is not entitled to any relief for several reasons.

1. Because the memorandum, as they contend, is not a perfected contract, but merely a note or memorandum of the stipulations of a proposed agreement, as to the true understanding and definite terms of which the parties never actually agreed, and on which their minds never in fact met.

2. Because, the parties having failed to agree as to the true understanding of the memorandum and the terms of the formal agreement which it contemplated, the complainant relinquished and abandoned the whole subject-matter of the instrument, and so notified the respondents.

3. They also contend that the agreement cannot be enforced, because the same was procured by fraudulent misrepresentations and concealments of the complainant.

4. That the agreement cannot be enforced, because the memorandum is without consideration.

5. Because the basis of the memorandum and the negotiations which led to it were the supposed legal copyrights held by the said Catharine; and they insist that those copyrights are void, and consequently that the agreement is inoperative, inasmuch as the parties entered into the same through mutual mistake.

6. Because the memorandum containing the agreement does not transfer nor assign any copyright to the complainant, or provide for or contemplate any such transfer or assignment.

I. Search is made in vain for any support to the first proposition of the defence, as applied to the terms or execution of the memorandum.

Interviews took place between the complainant and Professor Parsons, and they conferred together upon the subject-matter embraced in that memorandum, as suggested by the said Catharine; and the proofs show that they came to a perfectly amicable result, that the memorandum was drawn by the latter and delivered to the complainant, to be transmitted to the said Martha B. for her examination, and that she afterwards, on behalf of her mother and herself, and to signify their approval, signed the memorandum and wrote the date thereon, and caused the same to be delivered to the complainant. Expressed in intelligible terms as the memorandum is, the construction and effect of the language are questions of law which cannot be controlled or influ-

ceed by the opinion of any witness, not even by that of the person employed to prepare the draft for the consideration of the parties. He may not at the time have regarded it as a contract, but they were at liberty to adopt it as such; and if they did so, and it was duly and understandingly executed as such, their rights under it must be ascertained from the language employed, as applied, in view of the surrounding circumstances, to the subject-matter of the negotiation.

They subsequently differed, as the correspondence shows, as to the proper terms of the formal agreement for which the memorandum provides; but it was not denied, throughout that period, that the said Catharine had agreed "to make no use of Mr. Lawrence's notes in a new edition without his written consent," nor that she had also agreed to give him "the right to make any use he wishes to of his own notes." Attempt was made, it is true, to ingraft the qualification into the latter branch of the stipulation, that the complainant should not publish in the United States a new edition of the notes and other matter of his own composition, "which he had added to the said two editions of said book, until the last edition is sold"; but it is clear to a demonstration that the agreement, as expressed in the memorandum, contains no such qualification. Properly considered, it is equally clear also that there is nothing in the correspondence to sustain the theory of the respondents as presented in their first proposition. "On reflection," said the complainant in his letter to Mr. Parsons, dated June 14, 1863, "the suggestion you made yesterday offers many advantages over my proposed plan . . . as it settles at once and forever all questions in regard to the book." Influenced by those considerations, as he represents, he wrote a second letter of that date as a substitute, if preferred by the other party, for the one previously prepared to be forwarded to Mr. Brockhaüs, and submitted it to the approval of Mr. Parsons, as the friend of the said Catharine; but he expressly stated therein, that in sending it he did not wish to recede from the former arrangement. On the contrary, he stated in the enclosed letter that, having made an arrangement with the said Catharine, which gave him the entire control over his notes as published in English, and any claim she might have to the editions published by his correspondent, he had advised her to the effect that she might draw for the whole six thousand francs. He proposed in that letter to Mr. Parsons, that the said Catharine might retain

the copyright to the text, and to relinquish all claim for the expenses of the stipulated translation; but he did not propose to vary the agreement, as expressed in the memorandum, as to his own notes, and he also made claim to the right, if any, that the said Catharine had to the text and notes of the foreign editions.

Full consultation took place between Mr. Parsons and the said Martha, as the agent of the said Catharine; and Mr. Parsons, under date of June 16, 1863, wrote to the complainant that: "1. Mrs. Wheaton will send your last letter to Mr. Brockhaüs, and returns you your former letter. 2. Mrs. Wheaton will draw at once on Mr. Brockhaüs, at twenty days, for 6,000 francs. 3. When Mrs. Wheaton learns that the bill is paid, she will execute instruments satisfactory to you, which shall in the first place bind her not to use your notes without your written consent, and in the next place give you all her claims and interests in respect to the whole book, text and notes, for continental Europe in future." Inadvertently, Mr. Parsons omitted to re state the second clause of the agreement as expressed in the memorandum, that Mrs. Wheaton would give to the complainant the right to make any use he wished of his own notes; but, his attention having been called to the omission by the complainant on the following day, he replied, on the nineteenth of the same month, that the complainant was certainly right in his construction of their arrangement, that the complainant under it could make any use he saw fit of the matter which he had contributed. Appended to that letter is a note in the nature of a postscript, dated four days later, in which the writer suggests that Mrs. Wheaton was bound by her contract with Little, Brown and Company, as the publishers of the then current edition of the work, and that she could not convey to him anything covered by her copyright in any way detrimental to that edition; but he proposed no alterations of the agreement, and confirmed the same by his two letters, and none was made or proposed by the parties. Prior to the thirty-first of August, 1863, the complainant received intelligence that the bill of exchange drawn by the said Catharine had been duly honored, and on that day he wrote to Mr. Parsons, requesting him to cause the agreement of June 14, 1863, to be carried into effect. Delay ensued before any response was received to that request; but when it came, October 17, 1863, it brought with it a draft for the formal agreement, as stipulated in the memorandum. As originally prepared, the

draft contained three several stipulations. First, that the said Catharine should retain unimpaired the full legal exclusive copyright in the text of the book. Second, that she should in all ways respect the rights of the complainant to all the notes and other matter of his own composition, which he had added to the book, in the same manner and to the same extent as if he had a full legal copyright of the same. Third, that she thereby transferred and assigned to him thereafter the whole title, text and notes, to the editions published in continental Europe.

Besides these several stipulations, there was interlined in pencil at the close of the second stipulation the words following, to wit: "But the said W. B. Lawrence shall not publish a new edition thereof until the last edition is sold." Beyond doubt the draft was prepared without the words in pencil, and the explanations of Mr. Parsons upon the subject are, that he probably exhibited the paper after it was drafted to the said Martha B., or to the respondent, Charles C. Little, and that he made the interpolation at their suggestion. Dissatisfied with the draft as prepared, the complainant returned it to Mr. Parsons. His objections were twofold, as expressed in the letter returning the paper. First, because it made no reference to the "*Histoire du Droit des Gens*"; but, chiefly, on account of the stipulation that he should not publish a new edition until the last edition was sold, which he declared to be wholly inadmissible, as it would lead to new embarrassments. Alterations were subsequently made in the form of the draft, obviating the first objection, and limiting the restriction constituting the second and principal one, so that the complainant might publish a new edition before the last was sold anywhere except in the United States; but he declined to adopt it, insisting that the agreement as expressed in the memorandum contained no such stipulation. Determined not to involve himself in new complications, the complainant returned the last draft as amended to Mr. Parsons, stating to him, at the same time, that he had concluded, on reflection, to decline accepting any paper from Mrs. Wheaton. He had previously given him to understand that no such arrangement could be accepted, and more than intimated that if Mrs. Wheaton did not accede to his views in that behalf, matters must rest as they were in the original agreement. Contention, however, arose by some means between the parties in respect to what was quite unimportant, and what was not probably thought of by them or by Mr. Parsons when the memorandum was framed and executed.

Stipulations for the protection of the contract with the publishers of the prior editions were unnecessary, as their remaining interests, if any, were vested, and, being antecedent to the negotiations between these parties, could not be impaired by the agreement contained in the memorandum, for the reason, as clearly stated by the complainant, that Mrs. Wheaton could not convey what she did not own.

Viewed in any light, the correspondence shows nothing more than that the parties disagreed as to the extent of the obligation imposed by the memorandum, which is a question of construction; but it was never even suggested that it did not contain a complete valid agreement. Conclusive proof that neither Mr. Parsons nor Mrs. Wheaton entertained any such views during that period is found in the drafts for the formal instrument as prepared by the former, executed by the latter, and forwarded to the complainant for his acceptance. Both were prepared and signed, as therein recited, "*in execution of an agreement heretofore made by and between*" Mrs. Wheaton and the complainant, which is plenary evidence that up to that time the agreement expressed in the memorandum as to the notes was regarded as complete and obligatory.

II. Abandonment is the next defence to be considered; but the proposition must be examined in view of the conclusion announced, that the stipulations contained in the memorandum, as to the notes contributed by the complainant, are a perfected agreement, and not a mere proposal, as suggested by the respondents. Mere proposals may in general be withdrawn at any time before they are accepted by the party to whom they are made; and ordinary contracts, executory on both sides, may in certain cases be regarded as forfeited, as where the reciprocal stipulations are dependent, and where a party seeking to enforce performance has himself omitted to do something which he was required to perform as a condition precedent to his right of action. Cases may arise also where a party is estopped to set up a particular contract, as where he has subsequently agreed in due form of law and for a valuable consideration to relinquish its benefits or not, to enforce its provisions, or where he has, by his representations and conduct, designedly caused the other party to believe that the contract had been discharged or that it would not be enforced, and has intentionally induced that party to act on that belief, to his pecuniary prejudice; if the belief so induced is unfounded, the party in fault in such a case is estopped to allege or prove the

falsity of his representations as evidenced by his words and conduct. Pickard *v.* Sears, 6 Ad. and Ell., 474; Freeman *v.* Cooke, 2 Exch., 654; Van Rensselaer *v.* Kearney, 11 How., 326; Hawes *v.* Marchant, 1 Curt., 144; Moore *v.* Crofton, 3 Jones & La T., 446.

Argument to show that the case is not one of forfeiture is unnecessary, as the proposition finds no support whatever in the evidence. Contracts executed on one side and unperformed on the other stand upon a very different principle from those where nothing has been done by either, so far as respects the party who has fulfilled his obligation and paid the stipulated consideration. Rights and obligations secured or imposed under such circumstances have become vested and absolute; and if the delinquent party seeks to avoid the obligation imposed on him, he must allege and prove a new contract, for a valuable consideration, amounting to a valid release, or that the other party is estopped to enforce the obligation by virtue of some operative binding agreement to relinquish the benefits from the same, or not to enforce the stipulation; or he must allege and prove that he has been deceived and designedly misled by the admissions and representations of the other party, as before explained. Foster *v.* Dawber, 6 Exch., 854; Edwards *v.* Chapman, 1 Mees. & Wels., 231; Wildes *v.* Fessenden, 4 Met., 12; 1 Smith Lea. Cas. (5 Am. ed.), 462; Bank of Virginia *v.* Groves, 12 How., 51. None of the elements of estoppel exist in this branch of the case, as the complainant did not agree that he would discharge the memorandum or that he would not enforce its provisions. Nothing approximating to such an agreement is exhibited in the record, nor do the respondents in fact set up any such defence. What they do set up is, that the complainant relinquished and abandoned any agreement in the premises, and so notified the respondents, by which it is understood they refer to the letter of the complainant, addressed to Mr. Parsons, of the second of November, 1863, in which he says: "On reflection, I have determined to decline accepting any paper whatever from Mrs. Wheaton, and therefore return the enclosed," meaning the amended draft for the formal agreement. Disconnected from the circumstances and the other correspondence, it might be possible to misunderstand the meaning of the writer of that letter; but it must be construed in view of what preceded it, and of the subject-matter to which it related. Since the thirty-first of August preceding the date of that letter, the complainant had been more or less engaged in efforts to procure the formal agreement in

respect to the notes as stipulated in the memorandum; but all his efforts proved fruitless. Only eight days before, he prepared the draft of the letter exhibited in the record as one intended for the same correspondent in which he stated to the effect that his sole object in asking for the formal agreement was to prevent any further litigation, saying that he was satisfied that without it he could restrain any attempt to use these notes by Mrs. Wheaton, or any one else, in a future edition, adding, at the same time, that if she "does not sign the paper as now suggested," meaning one of the drafts for the formal agreement, without any restriction as to the use of the notes, then "matters can rest as they are." Although never sent to his correspondent, the exhibit may well be referred to, as tending to show the real intent of the complainant at the time it was written.

Weighed in view of the antecedent correspondence and the surrounding circumstances, it certainly would be a perversion of the language of the complainant to regard what he wrote on that occasion either as an agreement to relinquish or not to enforce that stipulation; and, even when separately considered, the language falls far short of what is necessary to justify any such conclusion. He made no admission by that statement inconsistent with the claim he now sets up; nor did he say anything to induce the said Catharine, or any one of the respondents, so to act that either she or they will be injured if the agreement expressed in the memorandum is held valid and enforced. Howard *v.* Hudson, 2 El. & Bl., 10; Audenried *v.* Betteley, 5 Allen, 385; Pierrepont *v.* Barnard, 2 Seld., 291; Rich *v.* Atwater, 16 Conn., 416; Plumer *v.* Lord, 9 Allen, 458. Expressions of a doubtful character are not sufficient to support such a defence as against a contract fully executed on the part of the complainant; but the meaning of the language employed must be clearly such that a man of ordinary prudence would take the representation to be true, and believe that it was meant that he should act upon it; and it must also appear that he did act upon it as true, so that he will be pecuniarily injured if it be allowed to be disproved. Rich *v.* Atwater, 16 Conn., 415; Mowry *v.* Sheldon, 2 R. I., 379; Flagg *v.* Mann, 2 Sum., 516; Langdon *v.* Doud, 10 Allen, 435; Moore *v.* Crofton, 3 Jones & La T., 446.

Estoppels are allowed to shut out the truth only when it is necessary to protect a party setting up such a claim or defence against an injury

or liability to which he is exposed without his own fault, and by reason of having trusted to the statements designedly made by the other party to expose him to such injury or liability, and which were of such a character that a man of ordinary prudence would take the representations to be true, and believe it was meant that he should act upon them as presenting the true state of the case. They must be proved, and will not be extended by implication beyond the plain import of the deceptive act, admission, agreement or representation. When the request was made by the complainant for the formal agreement, he doubtless expected that it would include the "Histoire," as well as the notes specified in the memorandum, and perhaps the memoir of the author and the indices; but the better opinion is, that, when he wrote the letter of June 14, 1863, he surrendered all claim to everything mentioned in the antecedent negotiations, except the claim to the notes as already secured, including of course the arrangement of the same, and the mode in which they are therein combined and connected with the text. All claim to the copyright of the text was abandoned by the complainant at a very early period of the negotiations, and it does not appear that it was ever after renewed.

Abundant evidence exists in the record to show that Mrs. Wheaton, as well as Mr. Parsons and Miss Wheaton, was willing to concede the claim of the complainant as to the History; but inasmuch as it was not included in the memorandum, the conclusion of the Court is, that the complainant, when he elected to stand upon the original agreement, relinquished that claim. He had previously described it as a matter of little or no value; and when he gave notice that he had determined not to accept any paper whatever from Mrs. Wheaton, it must be understood that he was content with what was secured to him in the memorandum. His right to the notes is therein plainly expressed, and there is no evidence in the record which shows that Mrs. Wheaton, or any one of the respondents, was ever misled by the language of the letter giving that notice. Conclusive evidence to the contrary is found in the several answers of the respondents, and their subsequent conduct confirms that conclusion.

III. Grant that the memorandum was regarded by the parties thereto as a contract, still the respondents contend that it cannot be enforced, because, as they allege, it was procured by the fraudulent

misrepresentations and concealments of the complainant. They submit that general proposition, and under it they make the following specific accusations: 1. That, when the negotiation as to the notes was commenced, there was not in fact any understanding between the complainant and Mr. Brockhaüs that the former should perform for the latter any editorial labor, either of revision or of translation. 2. That the foreign publisher was ready, at that time, to pay the six thousand francs to Mrs. Wheaton, without requiring any such labor from the complainant. 3. That the said publisher had not then made a final proposal to the complainant to pay anything to any one in that behalf, as appears by his letters addressed to the complainant. 4. That the complainant concealed the contents of those letters from Mrs. Wheaton, and those acting in her behalf. 5. That he falsely represented to her and those acting for her, that the said publisher would not pay the sum specified except upon his undertaking to revise his annotations and make such additions to the same as would adapt them to a new edition to be sold in Europe, and the general charge is, that she was induced to assent to the memorandum by reason of those false representations.

Accusations of fraud amount to nothing as a defence to a contract otherwise legal and binding, unless they are satisfactorily proved; and the burden of proof to establish such a defence is upon the party who makes such a charge. Attwood *v.* Small, 6 Cl. and Fin., 447; 1 Story, Eq. Jur., § 200; Park *v.* Johnson, 4 Allen, 266; Jennings *v.* Broughton, 5 De G., M. and G., 132; Campbell *v.* Fleming, 1 Ad. and Ell., 41. Apart from the inferences attempted to be drawn from the correspondence between the complainant and the foreign publisher, it is scarcely pretended that those accusations find any substantial support in the record; and the Court is of the opinion that the several letters, when properly construed, and considered in their proper connection, show that every one of the specific suggestions of fraud is unfounded. Correspondence between thecomplainant and the foreign publisher, in relation to a new edition of the work for the foreign market, commenced more than three years before the date of the memorandum; and in the first letter written by the complainant, he stated that he did not expect any compensation for his services, but that he should desire to obtain what he could for the widow of the author; and it is a mistake to suppose that the negotiation as to the notes commenced before there was any under-

standing upon that subject between those parties. Enough certainly had been learned to satisfy any reasonable person that the arrangement could be made if desired, and that was sufficient to justify the complainant in ascertaining what would be conceded as to the notes. Equally unfounded also is the charge that Mr. Brockhaüs was ready, at that time, or at any time before or afterwards, to pay the six thousand francs without any stipulation from the complainant to revise the notes and superintend their publication. His letter of the twenty-ninth of April, 1863, is a complete refutation of both those charges, and shows to a demonstration that the services to be rendered by the complainant really constituted the chief inducement to the arrangement. Convinced that the "rich emendations" made to the work by the complainant would, if adapted to his proposed new edition, be of great value, he was desirous to secure his services to accomplish that object, and. in order to do that, he was willing to pay the described amount. By his letter of June 12th, 1860, Mr. Brockhaüs called for a definite proposal; and the complainant, in his letter of August 25th, 1862, complied with that request, and made the proposal which, with slight modifications, was subsequently accepted; but, whether before or after the commencement of the negotiation as to the notes, is wholly immaterial. The charge that the letter of the 29th of April, 1863, or any of the others, was concealed from Mrs. Wheaton or those acting in her behalf, is disproved by the correspondence from which the inference is attempted to be drawn. Taken as a whole, the correspondence satisfies the Court that the foreign publisher never did agree to pay the six thousand francs except upon the undertaking of the complainant to revise his annotations, and to adapt the same to the proposed new edition for the foreign market, and that the respondents have failed to prove that the complainant was guilty of any fraudulent misrepresentation or concealment.

IV. Extended argument to show that the fourth proposition of the respondents cannot be sustained, is unnecessary, as it finds no support in the evidence. Founded as the proposition is upon the theory that the foreign publisher was willing to pay the money for antecedent obligations, or as a gratuity to the family of the author, it is sufficient answer to it to refer to what is said in response to the preceding proposition, without entering into details.

V. Next proposition of the respondents is, that the copyrights of

the editions of 1855 and 1863 are void, and consequently that the agreement expressed in the memorandum is inoperative, inasmuch as the parties entered into the same through mutual mistake. They insist that the copyrights are void for several reasons, which will be separately considered. 1. "Because no written assignment of copyright, or of the inchoate right of the complainant thereto, as the author, was ever made to Mrs. Wheaton." 2. Because the "notice of copyright inserted in the several copies published of said editions" is defective, "in the omission to give notice in said editions of the copyright secured in the" original edition of the work. 3. Because, upon the facts alleged and proved by the complainant, the copyrights of the editions in question were not taken out by the proper person, nor in the proper district.

Copyright may be granted under the copyright act to the author of any book falling within the classes described in the first section of the act, if the author is a citizen of the United States or permanently resident therein; and the first section also provides that such author shall have "the sole right and liberty of printing, reprinting, publishing and vending such book," for the term of twenty-eight years from the time of recording the title of the same as therein required. Executors, administrators and legal assigns of the author are also included in the purview of the section; but the fourth section provides, that no person shall be entitled to the benefit of the act unless he shall, before publication, deposit a printed copy of the title of such book in the clerk's office of the district Court of the district where the author or proprietor shall reside; and the provision is, that the clerk of such Court shall record such printed copy forthwith, in a book to be kept for that purpose, and in the form therein prescribed. 4 Stat. at Large, 437. Where the author continues to be the owner, he is entitled to a copy of the title; but if he has parted with the ownership, the requirement is, that the clerk of such district shall give a copy of the title under the seal of the Court to the proprietor. Ibid., 437. Proprietors of any such book, though not authors, are also recognized as entitled to the benefits of the act in another provision of the fourth section, in which they are required within three months from the publication of said book to deliver, or cause to be delivered, a copy of the same to the clerk of said district. Legal proprietors, though not authors, may also recover, of persons who print or publish any manuscript, the property of which is in them, with-

out their consent, all damages occasioned by such injury. Stevens *v.* Gladding, 17 How., 447. See also 4 Stat. at Large, 437, 439, §§ 6, 15.

Left in moderate circumstances, Mrs. Wheaton very properly desired to obtain something from the literary publications of her late husband; and, with that view, she sought the advice of the complainant, as the intimate friend of the author and of his family. Consultations accordingly took place between them upon the subject. Suggestion was first made that his reports of the decisions of the Supreme Court might be re-published; but their attention was soon directed to a new edition of the Elements of International Law, as affording more promise of profit beyond mere remuneration. Editorial labors were necessary to such an undertaking, and the complainant tendered his services, and the same were gladly accepted by Mrs. Wheaton and her children.

Pursuant to that arrangement, the complainant edited in succession the two editions in question; that is, he made some additions to and emendations of the text, prepared the notes, composed the memoir, and made the indices. Alterations were made in the arrangement as first concluded; but it is unnecessary to enter into details, as the proofs are clear that the complainant acted throughout that entire period with the distinct understanding that his services in editing those editions were to be gratuitous and without any charge. Speaking of the first annotated edition, the agreement was distinct that the contributions were to be furnished without charge, and the edition of 1863 was prepared with the same explicit understanding between the parties. Although the services were gratuitous, the contributions of the complainant became the property of the proprietor of the book, as the work was done, just as effectually as they would if the complainant had been paid daily an agreed price for his labor. He gave the contributions to the proprietor for those two editions of the work, and the title to the same vested in the proprietor, as the work was done, to the extent of the gift, and subject to the trust in favor of the donor as necessarily implied by the terms of the arrangement. Sweet *v.* Benning, 16 C. B., 480; Mayhew *v.* Maxwell, 1 Johns. & H. 315. Delivery was made as the work was done; and the proprietor of the book needed no other muniment of title than what was acquired when the agreement was executed. Sweet *v.* Cater, 11 Sim., 572; Simms *v.* Marryat, 7 Eng. L. & Eq., 337; Woods *v.* Russell, 5 Barn., & Ald., 942; Atkinson *v.* Bell, 8 Barn. & Cress., 277. Vested as the

title and property of the contributions were in Mrs. Wheaton, she would not acquire anything by an assignment from the contributor, as he had neither the immediate title to the contributions nor any inchoate right of copyright in those editions. He could not assign anything, because he owned nothing *in præsenti*, as the title to his contributions and the inchoate right of copyright for those editions had become vested in Mrs. Wheaton as proprietor of the book. Clarke *v.* Spence, 4 Ad. & Ell., 448; Laidler *v.* Burlinson, 2 Mees. & Wels., 602. Guided by these views, the Court is of the opinion that none of the authorities cited by the respondents to show that a written assignment from the complainant to Mrs. Wheaton was necessary have any proper application to the question under consideration; because the complainant never acquired any right to demand a copyright in his contributions to those two editions, but the contributions, as they were made and composed or put in form, became vested in the proprietor. Shepherd *et al. v.* Conquest, 17 C. B., 443, 444; Chitty on Con. (10th Am. ed.), 401; Tonson *v.* Walker, 3 Swanst., 672. Certain remarks are found in the opinion of the Court in the case of Pierpont *v.* Fowle, 2 W. & M. 46, apparently inconsistent with the views here expressed; but the decision of the Court in that case is a sufficient answer to those remarks. Contrary views, it is sometimes supposed, are also expressed in the case of Atwill *v.* Ferrett, 2 Blatch., 46; but the learned judge admits that an equitable title may vest in one person to the labors of another where the relations of the parties are such that the former is entitled to an assignment of the production, which is the precise point involved in the case before the Court; and many other authorities than those cited in that case sustain the same principle. Sweet *v.* Shaw, 3 Jurist, 217; Colburn *v.* Duncombe, 9 Sim., 155; Little *v.* Gould, 2 Blatch., 362; Sweet *v.* Cater, 11 Sim., 572; Mawman *v.* Tegg, 2 Russ., 385; Nicol *v.* Stockdale, 3 Swanst., 687; Cary *v.* Longman, 3 Esp., R., 273.

Second defect in the copyrights, as alleged in argument by the respondent, "consists in the omission to give notice in said editions of the copyright secured in the original edition." Persons desirous of securing a copyright must comply with the conditions of the copyright act, and if they fail to do so, they are not entitled to the benefit of its provisions. Authorities to support that proposition are not necessary, as those conditions are prescribed by an act of Congress. Deposit must be made

before publication, if the subject-matter is a book, of a copy of such book in the clerk's office of the District Court, as before explained; and the applicant must give information of copyright being secured, by causing to be inserted, in the several copies of each and every edition published during the term secured, on the title page or the page succeeding, the following words, viz., "Entered according to act of Congress in the year , by A. B., in the clerk's office of the District Court of ," (as the case may be). Beyond doubt, the omission to comply with those requirements renders the copyright invalid, as the act provides that no person shall be entitled to the benefit of the act unless he fulfils those conditions; but the important inquiry arises, what are those conditions? Wheaton *v.* Peters, 8 Pet., 591; Ewer *v.* Coxe, 4 Wash., 487. Full compliance with the conditions prescribed in the fourth section of the act is conceded; but the theory of the respondents is, that the fifth section of the act requires that the same notice *in totidem verbis* must be inserted in the several copies of each and every edition published during the term secured, so that the second and every subsequent edition shall correctly specify the date of the original entry. They cite no authorities which support the proposition, and they assign no reasons in support of it, except that the act makes no provision for a change of the date in the successive notices to be given, and that the omission to give notice of the original copyright in subsequent editions tends to mislead the public. Acts of Congress are to be construed by the rules of the common law, and the construction should be such as will carry into effect the true intent and meaning of the legislature; but the province of construction can never extend beyond the language employed as applied to the subject-matter and the surrounding circumstances. Rice *v.* Railroad, 1 Black, 359; Binney *v.* Canal Co., 8 Pet., 201. Change of date in the notice required in case of successive editions of the same book, it may be conceded, is not contemplated by the fifth section of the copyright act; but the meaning of the provision is, that a new notice in the same prescribed form shall be given in every improved edition published during the term. Compliance with that requirement, when the original edition is published, is a full protection for that edition throughout the term; but it is no protection to a second edition with notes, nor to any succeeding edition with improvements; because the requirement is, that the "information of copyright secured" shall be "inserted in the

several copies of each and every edition." Neglect to comply with that condition in a second edition will not vitiate the copyright of the original edition if it was regularly secured, nor will a valid copyright of a second edition cure material defects in the copyright of the original edition. Copyrights of the editions of a work, other than the original edition, are granted for additions to, emendations of, or improvements in the work, and every copyright should bear date of the day when it was secured. Authors or proprietors of a book for which a copyright is secured are required, by the second section of the act of the 3d of March, 1865, "within one month of the date of publication," to transmit, free of postage or other expense, a printed copy of the book to the library of Congress at Washington, for the use of said library; and the fourth section provides, that in the construction of that act the word "book" shall be construed to mean every volume and part of a volume, together with all maps, prints or other engravings belonging thereto, and shall include a copy of any second or subsequent edition which shall be published with any additions; but the proviso enacts that the author or proprietor shall not be required to deliver to the said library any copy of the second or any subsequent edition of any book, unless the same shall contain additions as aforesaid, nor of any book not the subject of copyright. 13 Statutes at Large, 540. Prior to the passage of that act, the Courts had decided that the "information of copyright being secured," if duly entered in the first volume of a work of several volumes, was sufficient; but all the residue of the provision is merely in affirmance of the true intent and meaning of the copyright act. Dwight *v.* Appleton, 1 N.Y. Leg. Obs., 198. Subsequent editions without alterations or additions should have the same entry, because they find their only protection in the original copyright; but second or subsequent editions with notes or other improvements are new books, within the meaning of the copyright acts, and the authors or proprietors of the same are required to "deposit a printed copy of such book," and "give information of copyright being secured," as if no prior edition of the work had ever been published; and the term of the copyright as to the notes or improvements is computed from the time of recording the title thereof, and not from the time of recording the title of the original work. Copyrights, like letters patent, afford no protection to what was not in existence at the time when they were granted. Improvements in an invention not made

when the original letters patent were issued are not protected by the letters patent, nor are the improvements in a book not made or composed when the printed copy of the book was deposited and the title thereof recorded as required in the fourth section of the copyright act. Protection is afforded by virtue of a copyright of a book, if duly granted, to all the matter which the book contained when the printed copy of the same was deposited in the office of the clerk of the District Court, as required by the fourth section of the copyright act; but new matter made or composed afterwards requires a new copyright, and if none is taken out, the matter becomes public property, just as the original book would have become if a copyright for it had never been secured. Publishers may be in the habit of inserting more than one notice in new editions, but there is no act of Congress prescribing any such condition. Whenever a renewal is obtained under the second section of the copyright act, the requirement is, that the title of the work so secured shall be a second time recorded, and that the applicant must comply with all the other regulations in regard to original copyrights; but there is nothing in any act of Congress to show that each successive edition must specify the date of the original copyright, as contended by the respondents. Tendency to mislead the public cannot be successfully predicated of a copyright in due form of law, where it appears that the party who secured it complied with all the conditions prescribed in the copyright act; which is all that need be remarked in reply to the suggestion of the respondents upon that subject.

Special examination of the third objection made by the respondents to the copyrights in question is unnecessary, as it is clear that if the property and title of the matter contributed by the complainant vested in Mrs. Wheaton as the work was done, she was the proper person to take out the copyright; and it is not controverted that, if she was the proper person, she took it out in the proper district.

Based as the objections to the validity of the copyrights are upon an assumed construction of the fifth section of the copyright act, the Court thought it right to examine the several questions presented upon their merits; but it would be a sufficient answer to the entire proposition to say that no such defence is set up in the answer. Foster *v.* Goddard, 1 Black, 518. Other answers are made by the complainant to the proposition; but the Court, having come to the conclusion that it is founded

in a misconstruction of the copyright act, do not find it necessary to give the other suggestions much consideration. Stated in brief words, the conclusions of the Court are, that the copyrights are valid, and that the agreement set forth in the memorandum is binding.

VI. Unexecuted, however, as the agreement is, it does not transfer nor assign the copyrights in question to the complainant. Both parties agree to that proposition; but the respondents err in supposing that the agreement does not provide for, nor contemplate any such transfer or assignment as is plainly shown by the very terms of the memorandum. Copyright of a book, when taken out in due form, secures to the author or proprietor the sole right and liberty of printing, reprinting, publishing and vending such book, during the term for which it is granted; but it secures nothing more; and the agreement was, that Mrs. Wheaton, who held the legal title of the copyrights, should make no use of the notes in a new edition without the written consent of the complainant, and that she would give him the right to make any use of the same he might see fit, which was in all respects equivalent to a contract to transfer and assign to him the legal title to the copyrights. Equity would have compelled the execution of the formal instrument therein stipulated, if the right to demand it had not been waived by the complainant. His claim as now presented is twofold, and in the judgment of the Court it may be sustained upon both grounds. Curtis on C., 315; Mawman *v.* Tegg, 2 Russ., 385; Sweet *v.* Shaw, 3 Jurist, 217; Colburn *v.* Duncombe, 9 Sim., 155. The legal title to the copyrights is in Mrs. Wheaton or her legal representative; and the complainant claims in the first place that the same is held in trust for him as the equitable owner of the notes, by virtue of the original arrangement under which the same were prepared. Secondly, the complainant claims that the negative as well as the affirmative promise contained in the agreement in regard to the use of the notes was binding upon Mrs. Wheaton, and that both are obligatory upon her legal representative, and all others having notice of the existence of those covenants. Barfield *v.* Kelly, 4 Russ., 355.

Two principal objections are taken by the respondents to the claim of the complainant that he is the equitable owner of the notes under the original arrangement. 1. They deny that the proofs in the case warrant any such finding, especially as the theory is denied in the answer. 2. They contend that Mrs. Wheaton, if such was the agreement, could

not legally copyright the notes, as it would show that she was but a mere licensee, and that the copyrights in that state of the case would be void on that account.

1. Conclusive proof to show what was the original understanding between the parties is found in the correspondence upon the subject. Unaided by any one, the complainant prepared the notes, but with the express understanding that he would do so without any charge, and that the property of the same, so far as respected the new edition, should vest in the proprietor of the book, and that she should take out the copyright and remain, as she was, the sole and exclusive owner of the entire book. Liberal, however, as the agreement was towards the proprietor of the book, yet it did not include anything except that edition; and when the second annotated edition was prepared under a similar arrangement, as conceded by both parties, the agreement was not extended beyond that publication. Confirmation of those propositions is unnecessary, as they are not controverted by the respondents. They deny that it was agreed between the parties that the notes should ever afterwards become the property of the complainant, but they do not allege nor offer any proof tending to show that his agreement with Mrs. Wheaton extended beyond the annotated editions. Tested by these indubitable facts, the rights of the parties are plain and easy to be understood. As the proprietor of the book, Mrs. Wheaton, by virtue of that arrangement, became the absolute owner of the notes as they were prepared, so far as respects the editions in question; and she also acquired therewith the right to copyright the same for the protection of the property; but she did not acquire thereby any right or title, legal or equitable, to use the notes in a third edition of the annotated work without the consent of the complainant. Proof to support any such right or title is entirely wanting in the record, and no such right or title is set up in the answer. Sweet *v.* Cater, 11 Sim., 572. Such omission confirms the view that no such right or title was intended to be conveyed, and the subsequent conduct of the parties in executing the memorandum tends strongly to the same conclusion.

2. Suppose the facts to be so, then the respondents contend that the copyrights are void, because, as they insist, the applicant for the same was a mere licensee of the author of the notes; but the Court is of a different opinion, for the reasons already given, as well as for others yet to be

mentioned. Literary property, even when secured by copyright, differs in many aspects from property in personal chattels, and the tenure of the property is governed by somewhat different rules; but the difference in the nature and tenure of the property is much greater before copyright is taken out, and while the right to that protection for the same remains entirely inchoate. Title to the notes or improvements prepared for a new edition of a book previously copyrighted may, in certain cases, be acquired by the proprietor of a book from an employee, by virtue of the contract of employment, without any written assignment; and, when so acquired, the tenure of the property depends upon the terms of the contract, but it cannot be held to be a mere license where, as in this case, the contract was that the proprietor of the book should take the exclusive right to the contributions for two successive editions, together with the right to copyright the same for the protection of the property, as the inchoate right of copyright unquestionably passed to the proprietor of the book by the same arrangement. Agawam Co. *v.* Jordan, 7 Wall., 603; Fletcher *v.* Morey, 2 Story, 564. Such inchoate right is incapable of any other limitation than that prescribed by the copyright act, so that the proprietor of the book necessarily took out the copyright in the usual form. Beyond controversy, she took it out by the consent of the complainant; and it is equally clear, in the judgment of the Court, that she took it out for the protection of her own property in the notes, and in trust for the complainant when her property in the notes should cease. Mawman *v.* Tegg, 2 Russ., 385; Little *v.* Gould, 2 Blatch. 365. Arrangements of the kind, it is believed, are frequently made between the proprietors of books and editors employed to prepare notes or other improvements to successive editions; and it is not perceived that there is any legal difficulty in upholding such a contract where, as in this case, it violates the rights of no one, and is entirely consistent with the public right. Fletcher *et al. v.* Morey, 2 Story, 566. Entered into as it was in good faith, and with a full knowledge of all the facts, it was not void; and neither the representative of the proprietor of the book, nor any other person having notice of the same, is at liberty to repudiate it, as it appears that it was knowingly acted upon in a way that the complainant would suffer serious pecuniary injury to allow it to be disproved. Farina *v.* Silverlock, 39 Eng. L. & Eq., 516; Eicolt *v.* Bannister, 17 C. B. (N. S.), 708; Sherman *v.* Champlain Co., 31 Vt., 175; Cairncross *v.* Lorimer, 3 Law Times, 130.

Covenant is the second ground of claim as set forth in the bill of complainant; and it is undoubtedly true, as contended by the respondents, that the theory of the claim as presented in allegation and in proof is that the legal title to the copyrights vested in the proprietor of the book. The respondents in argument deny that proposition, and insist that the copyrights are void; but the objections they make to their validity have already been examined and overruled, and the reasons assigned for the conclusions need not be repeated. Expressed as the promises are, both the negative and affirmative, in plain and unambiguous language, they require neither construction nor explanation; and it is clear that they are binding upon the legal representative of the proprietor of the book, and all others having notice of the rights of the complainant. Colby *v.* Duncombe, 9 Sim., 155. Mrs. Wheaton died March 5, 1866, leaving two children; but it is alleged and conceded that the respondent, Martha B. Wheaton, is the administratrix of her estate, and so far as respects the book in question her sole heir. Controlled by these reasons, the Court is of the opinion that the complainant, in the view of a Court of Equity, is the equitable owner of the notes, including the arrangement of the same, and the mode in which they are therein combined and connected with the text, and of the copyrights taken out by the proprietor of the book for the protection of the property, including the equitable ownership of the complainant. Fletcher *v.* Morey, 2 Story, 564; Parker *v.* Muggridge, 2 Story, 342; Clark *v.* Southwick, 1 Curt., 299; Rerick *v.* Kern, 14 S. & R., 271; Simms *v.* Marryat, 7 Eng. L. & Eq., 337; Curt. on C., 315; Mayhew *v.* Maxwell, 1 Johns. & Hem., 315.

Brief examination will next be made of the special defence set up by the respondents who published the edition of the work which is the subject of complaint, and also by the respondent who edited the same, that they cannot be adjudged liable to any decree because they had no notice of the alleged trust or agreement. Plenary proof is exhibited in the record that the senior partner of the publishing firm had full knowledge of all the circumstances attending the preparation of the notes and the publication of the two annotated editions, and also full knowledge of the memorandum at the time it was executed, and of all the subsequent negotiations in respect to the formal agreement. Reference need only be made to the correspondence in the record, and to his own answer and

deposition in the case in support of that proposition; and the circumstances as disclosed in the correspondence show, to the entire satisfaction of the Court, that the other members of the firm knew, or might have known, what the claim of the complainant was to the notes, long before the contract for publishing the edition in question was executed, and all the facts and circumstances connected with the claim, as fully as they were known to their senior partner. Proof beyond what already appears is certainly unnecessary to show that the proprietor of the book, and the respondent, Martha B. Wheaton, were repeatedly apprised of the claim of the complainant in terms which could not be misunderstood. Their friend and legal adviser knew all that had transpired, and, in view of the circumstances, and the acknowledged intimacy of the respondent who edited the edition, the conclusion of the Court is, without hesitation, that he knew enough of the claim of the complainant to put him upon inquiry. His answer tends strongly to support that proposition, and the same inference is fully justified by his deposition. He admits that the proprietor of the book, when the agreement that he should edit the edition in question was made between them, expressed the wish that he should not make any use of the notes prepared by the complainant; and in his cross-examination he states to the effect that the respondent, Martha B. Wheaton, proposed to read to him all that had passed between her mother and herself, Mr. Parsons and Mr. Lawrence, but that he declined to hear it, wishing to confine himself as much as possible to the position of an editor. Some of the remarks made by the same respondent, in the interview which took place between him and the complainant, and his conduct in refusing to read the letter of the complainant when it was handed to him for that purpose, tend strongly in the same direction. Nothing is better settled than the rule, that whatever puts a party upon inquiry is sufficient notice in equity.

Ordinary prudence is required of every person dealing with trust property; and if he fails to investigate when put upon inquiry, he is chargeable with all the knowledge it is reasonable to suppose he would have acquired if he had performed his duty. Hill *v.* Simpson, 7 Ves. Jr., 170; Kennedy *v.* Green, 3 Myl. & K., 722; Com. Dig., Chan., 4 C, 2; Smith *v.* Low, 1 Atk., 489; 3 Sug. on V. and P. (10th ed.), 471; Jones *v.* Smith, 1 Hare, 43; Booth *v.* Varnum, 9 Conn., 286; Pitney *v.* Leonard, 1 Paige, Ch. R., 461; Carr *v.* Hilton, 1 Curtis, 390.

Constructive notice is held sufficient upon the ground that when a party is about to perform an act by which he has reason to believe that the rights of a third person may be affected, an inquiry as to the facts is a moral duty, and diligence an act of justice. Hence, says Judge Duer, in the case of Pringle *v.* Phillips, 5 Sand., S. C. R., 157, he proceeds at his peril when he omits to inquire, and is then chargeable with all the knowledge of the facts that by a proper inquiry he might have ascertained. Hawley *v.* Cramer, 4 Cow., 717; Williamson *v.* Brown, 20 Law Rep., 397; Fulton Bank *v.* Canal Co., 4 Paige, Ch. R., 127; Bank of Alex. *v.* Seton, 1 Pet., 309. Inquiry is a moral duty whenever the circumstances are such that a person of ordinary prudence would refuse to act; but if a party under those circumstances shuts his eyes to the means of knowledge which he knows is at hand, he then forfeits every pretence of defence, as such conduct is equivalent to actual notice of all the facts he might have ascertained by a performance of his duty. May *v.* Chapman, 16 Mees. & Wels., 355.

Grant that the several conclusions announced by the Court are correct, still the respondents insist that the complainant is not entitled to a decree; because they contend that they have not infringed the equitable right of the complainant to the exclusive use of the notes in question, nor violated the terms of the agreement as expressed in the memorandum.

Before proceeding to examine the question of infringement, it will be necessary to reproduce, as concisely as possible, some of the principal issues upon the subject as presented in the pleadings.

Statement of the complainant is, that, prior to the last edition annotated by him, there was no book of international law in which all the authorities bearing upon the different questions discussed or referred to in the original work of the author, or in his antecedent annotations, were collected and presented in a convenient form for reference. Such authorities, as he represents, consisted of judicial decisions, diplomatic discussions by distinguished diplomatists, and dissertations, treatises and lectures of learned publicists and writers upon the law of nations; that he undertook to collect and present, and by a considerable amount of labor and intellectual exertion did collect and present, in his notes and in a convenient form, with reference to each question so discussed, the discussions and opinions as aforesaid, translating such as were in any foreign language, and giving them in full where they seemed sufficiently important

to be so presented, and in other cases referring to them, giving the name of the book and the page where the passage could be found; that many of the authorities so collected, and particularly those relating to diplomatic discussions and negotiations, and those showing the way in which cases involving principles of international law have arisen between different nations and been determined, are to be found in newspapers, gazettes, legislative debates, the series of books such as the Annual Register and others named or referred to in the bill of complaint, not treatises on international law; that there is no book which can serve as an index or digest to assist an author in any material respect in collecting such authorities; that the number of books and papers of that nature examined by him in searching for the authorities and matters cited by him is so great, that it is only possible to make such collection by devoting much attention to the subject for many years, and by making and preserving memoranda of such matters bearing upon the subject as from time to time they come to the knowledge of a person giving a large share of his attention to such matters, and reading all such books as relate to the subject, and availing himself of much intercourse with persons conversant with such matters. Corresponding statement of the respondent is, that the plan of work he adopted was to take the text of the author of the book with his notes, and annotate the same with original notes of his own, in the same manner as if they had never before been annotated; that it was no part of his plan to revise, reduce, or alter the complainant's notes, even in such manner as the law of copyright would have permitted if the complainant had had a copyright therein; but that his course was, after reading a topic in the text, if he thought it required annotation, to examine all the works to which he had access bearing upon the topic, and, among others, but not more or differently than others, the contributions of the complainant. When he had made all the examination he thought necessary, the allegation is, that he then gave the subject the best reflection he could, and subsequently wrote out a new and original note in every instance, in manuscript throughout, in his own hand or that of an amanuensis, and without other reference to, or assistance from, any notes of the complainant than as above stated.

The complainant also alleges, that in preparing the text of his edition he exercised a considerable amount of skill and judgment in the arrangement of his annotations, and in combining and connecting them

with the text, and that he prepared [redacted] index to the same; and he charges that the respondents, in their book, have copied, conformed to, and pirated the said annotated book and the annotations of the same which he prepared; and that they have used and availed themselves of the said book and annotations and the said labors of the complainant. Responsive to the charge that his notes are in a great part taken and copied from those of the complainant, and that he has pirated and unduly used the contributions of the complainant, the respondent totally denies the same and every part thereof. Evidence to show that the notes in the two annotated editions of Wheaton's Elements of International Law, as prepared by the complainant, involved great research and labor, beyond what appears in those two works, is unnecessary, especially as the allegations in the bill of complaint to that effect are not directly denied in the answer; and it is equally obvious and clear that the results of the research and labor there exhibited could not well have been accomplished by any person other than one of great learning, reading and experience in such studies and investigations. Such a comprehensive collection of authorities, explanations and well-considered suggestions, is nowhere, in the judgment of the Court, to be found in our language, unless it be in the text and notes of the author of the original work. Uncontradicted as these propositions are, it would be an act of supererogation to add anything further in their support. Much, also, has been accomplished by the last editor of the work in the same direction, and in the collection and presentation of similar matters wholly distinct and separate from what was antecedently collected and presented by the complainant. But the review and comparison of the merits of the respective books are not matters within the province of the Court, except so far as the same become necessary in order to decide the issues involved in the pleadings. Stripped of all mere form, the charge against the respondent is, that he has infringed the rights of the complainant; and that question is the only one of much importance which remains to be considered. Apart from the testimony of the parties themselves, and the comparison of the books, the evidence in the case consists mainly of the testimony of the two experts, and the result of the respective comparisons made by them, of the notes and citations of authorities contained in one of the books with those of a corresponding character contained in the other,

together with the opinion of other cases expert witness, whether the several notes and citations so examined and compared are or are not of the same character. Though admissible in all such cases, the opinions of experts are nevertheless in their nature secondary evidence; but the comparisons made by them in this case have very much facilitated the investigations made by the Court. Considerable aid has been derived from that source, and from the testimony of the parties; but the Court has found it necessary to re-examine the comparisons made by the witnesses, and to make others for themselves, in order to come to a satisfactory conclusion. Regarded as a basis to enable the Court to compare one book with the other, the results given by the experts, as exhibited in their depositions, have proved to be of great service to the Court in estimating the weight to be given to their respective opinions. Complicated as the facts are, the examination of the case has imposed much labor upon the judges; but the investigation has been made with care, and continued from time to time until both are satisfied that the Court is prepared to render a just decision. Like other controversies of a similar character, the issue upon the merits presents two questions, one of fact and the other of law. Stated in brief terms, the question of fact is, what use did the respondent who edited the edition in question make of the complainant's notes? And the question of law presented, inasmuch as it is conceded that he used the same to some extent, is, was that use allowable, or was it of a character and to such an extent that it infringed the complainant's rights. Direct evidence upon the subject is unattainable, as the respondent states that he cannot remember nor undertake to give the authors from whom he derived any particular class of citations. Difficult though it be to make proof, still the complainant is not entitled to any decree, unless he proves infringement, as alleged, to the satisfaction of the Court, as the burden in that issue is always upon the party making the charge. Except that the burden is upon the complainant, the same difficulty is experienced by the respondents in their efforts to prove the affirmative allegations of the answer, and consequently both parties are obliged to rely chiefly upon a comparison of the contents of the respective books, as the best evidence which either party is able to produce. Examination of the notes contained in the respective books will show, that the description given of them by one of the respondents'

witnesses is quite accurate. He stat[illegible] effect, that they are either statements of historical events, accounts of legislative debates, narratives of diplomatic discussions, negotiations or correspondence, abstracts of cases in the Courts or judicial tribunals of different countries, or summaries of other text-writers or essayists on international law, and other kindred topics, accompanied with references to the books and documents where the matters are to be found. Such authorities and references of the kind mentioned are very numerous in the edition containing the notes of the complainant, and he contends that the respondent has made a much larger use of such notes, references and authorities, including those collected and presented by him to illustrate particular topics of international law, than the law of copyright or the agreement between him and Mrs. Wheaton, as expressed in the memorandum, will permit. Numerous instances are given where the same topics are illustrated in the two works by reference to the same historical facts or diplomatic negotiations, and where the views expressed are supported by the citation of the same books, pamphlets, debates and newspapers; and the complainant contends that these coincidences occur in instances so numerous that it is past belief that they could be accidental; and he insists that the just inferences to be drawn from these coincidences, when taken in connection with the admission of the respondent that he did make some use of the complainant's book for the purposes of reference, fully sustain the burden of proof on his part. and justify the conclusion that, in each particular instance in which the citations and authorities are the same, they were in fact taken from his book, unless the respondent can explain these coincidences, or show that the citations and authorities were derived from some other quarter. Weighed as required by the rules of circumstantial evidence, the complainant contends that these coincidences of fact, as exhibited in the two books, are not only consistent with the charge of infringement, but that they, taken as a whole, are absolutely inconsistent with any other theory, which is the test usually applied in cases where proof is required beyond any reasonable doubt. Great latitude is justly allowed by the law to the reception of indirect or circumstantial evidence, the aid of which is constantly required in the administration of justice; and whenever the necessity for a resort to such evidence arises either from the nature of the inquiry or

the failure of direct proof, [illegible] cases to testimony on the ground of irrelevancy, even in common law suits, are not favored, for the reason that the force and effect of circumstantial facts usually and almost necessarily depend upon their connection with each other. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially if corroborated by moral coincidences, be sufficient to constitute full and conclusive proof. Castle *et al. v.* Ballard, 23 How., 187; 1 Stark Ev., 58, 862.

Instances quite numerous are also given where clerical and typographical errors and peculiarities, including special translations, are reproduced in the edition prepared by the respondent; and the Court is reminded in argument that cases have arisen where the strongest proof of copying consisted "in the coincidence of errors." Jeremy, Eq. Jurisd., 322. Where the question is whether the defendant in preparing his book had before him and copied or imitated the book of the plaintiff, it is manifest, says Mr. Curtis, that this kind of evidence is the strongest proof, short of direct evidence, of which the fact is capable. Curtis on C., 255; Murray *v.* Bogue, 1 Drewry, 367; Spiers *v.* Brown, 6 W. R., 353. Other authorities may be cited where the presumptions arising from the identity of inaccuracies is carried much further, and where it is held that when a considerable number of passages are proved to have been copied by the copying of the blunders in them, other passages which are the same with passages in the original book must be presumed *prima facie* to be likewise copied, though no blunders occur in them. Mawman *v.* Tegg, 2 Russ., 394; Longman *v.* Winchester, 16 Ves. Jr., 269.

Coincidence of citation is also invoked by the complainant as evidence of copying; and the instances given as examples are many where the authorities are cited in the same way, that is, by volume and page, or by chapter and section, as the case may be, and from the same edition of the work, and from the same place.

Identity in the plan and arrangement of the notes, and in the mode of combining and connecting the same with the text, is also invoked by the complainant, as strongly supporting the charge of infringement; and it is quite apparent, on a comparison of the two books, that the instances of identity in that respect are numerous and pervading. Copyright may justly be claimed by an author of a book who has taken existing materials from sources common to all writers, and arranged

and combined them in a new form, [illegible] given them an application unknown before, for the reason that in so doing he has exercised skill and discretion in making the selections, arrangement and combination, and having presented something that is new and useful, he is entitled to the exclusive enjoyment of his improvement, as provided in the copyright act. Gray *v.* Russell, 1 Story, 11; Lewis *v.* Fullarton, 2 Beav., 6; Greene *v.* Bishop, 1 Cliff, 199; Emerson *v.* Davies, 3 Story, 768; Story *v.* Holcombe, 4 McLean, 309. Books "made and composed" in that manner are the proper subjects of copyright; and the author of such a book has as much right in his plan, arrangement and combination of the materials collected and presented, as he has in his thoughts, sentiments, reflections, and opinions, or in the modes in which they are therein expressed and illustrated; but he cannot prevent others from using the old material for a different purpose. All he acquires by virtue of the copyright is "the sole right and liberty of printing, reprinting, publishing and vending such book" for the period prescribed by law. Others may use the old materials for a different purpose, but they cannot copy and use his improvement, which includes his plan, arrangement and combination of the materials, as well as the materials themselves of which the book is made and composed. Emerson *v.* Davies, 3 Story, 768; Curtis on C., 180; Gray *v.* Russell, 1 Story, 17.

Many other facts and circumstances are adduced by the complainant in support of the charge of infringement; but the classes mentioned will be sufficient for the present investigation, as it is not the purpose of the Court to enter into the details of the evidence. Infringement in any and every form, as alleged in the bill of complaint, is denied in the answer; and the respondent, in addition to such denials, has presented in proof and in argument very elaborate and minute explanations of all the principal facts and instances adduced by the complainant in support of the charge of infringement. Separate examination at this time of each one of the explanations so given would be impracticable, and any partial review of them in the opinion would necessarily be unsatisfactory, as it would afford ground for inference that the residue had been overlooked, or that they had not been duly considered. Suffice it to say, that they have all been read, studied, and made the subject of careful comparison with the facts and circumstances adduced by the complainant; but the conclusion of the court is that they

are not of a character, per case, generally, to rebut the particular proofs of the complainant, to which it was intended they should be applied. But the respondent contends that, even if it be true that matters of fact, citations and authorities have been borrowed to a considerable extent, he had a right to take them, as the use he made of them was substantially new, and different from that made by the complainant in the two prior annotated editions of the work, because they were used by him in illustration of new and original propositions. Secondly, he contends that the complainant is not entitled to any decree on account of any use he has made of the matters of fact, citations and authorities exhibited in those editions, because, as he insists, the use he so made amounts to no more than a fair and original abridgment of the former editions. The doctrine of new and different use in the law of copyright applies more particularly to the old materials, and not the materials of a work like that of the last annotated edition of the complainant, where the materials collected are much abridged, and sometimes paraphrased and newly arranged, and combined with the text of the original work. Beyond all doubt he might take the old materials as found in the sources from which the matters of fact, citations and authorities of the complainant were drawn, and use them as he pleased in illustration of new and original propositions, or for any other purpose not substantially the same as that to which they are applied in the annotated editions edited by the complainant; but he could not borrow the materials as therein collected and furnished, nor could he rightfully use the plan and arrangement, or the mode by which they are combined with the text, beyond the extent falling within the definition of fair use, which rule is only applicable to the materials, and not to the plan, arrangement and mode of operation. Proper attention to the nature of the charge in the bill of complainant will show that the doctrine of new and different use is wholly inapplicable to the matter in issue between the parties, because the charge is, that the respondent has borrowed the matters of fact, citations and authorities collected and presented in the notes of the complainant, and not that he has made the same use of the old materials. On the contrary, the charge is, that he has not consulted the old materials at all, but that he has borrowed the matters of fact, citations and authorities exhibited in his book from the matters of fact, citations and authorities as collected,

arranged and combined with the text [illegible] two annotated editions. Even supposing the rule to be otherwise, and that a second writer may take bodily the matters of fact, citations and authorities collected, arranged and combined, as in the two annotated editions before the Court, if the use he makes of the materials is substantially new and different, still the concession will not benefit the respondent, as his edition of the work, except the new materials collected and presented, occupies the same field and was designed for the same class of readers, and was "made and composed" for the same general purpose. Unsupported by the evidence, as the theory of fact involved in the proposition is, it is quite clear that it cannot furnish any defence for the respondent, even if the principle is correct. Argument to show that an author may have a copyright in his notes to an older work, though the materials collected are not new, is unnecessary, as the proposition is elementary, if it appear that they have never before been collected and embodied. Gray *v.* Russell, 1 Story, 11.

The respondent's second proposition deserves more consideration, as it presents a defence applicable to the main issue involved in the pleadings. Concisely stated, the proposition is, that, even conceding that he borrowed materials from the prior annotated editions to a considerable extent, still the quantity so taken and used did not amount to more than a fair and original abridgment of the former annotated editions. Third persons cannot make any use of a patented invention without the consent or license of the patentee, because he acquires, by virtue of his letters patent issued under the patent act, the full and exclusive right and liberty of making and using his invention, as well as of vending it to others to be used, for the term allowed by law; but the right secured to the author or proprietor of a book is only "the sole right and liberty of printing, reprinting, publishing and vending such book," which, as construed by the Courts, means the exclusive right to multiply copies for the benefit of the author or his assigns. Stephens *v.* Cady, 14 How., 330; Reade *v.* Lacy, 1 Johns. & Hem., 526; Millar *v.* Taylor, 4 Burr., 2311; Stowe *v.* Thomas, 5 Am. L. Reg., 228. Courts have sometimes supposed that the same rule of decision should be applied to a copyright as to a patent for a machine, and consequently that an abridgment of an original work made and condensed by another person without the consent of the author of the original work ought to be regarded as an infringement; but the

language of the respective cases. Congress making provision for the protection of such rights is different; and the opposite doctrine has been too long established to be considered at the present time as open to controversy. Story *v.* Holcombe, 4 McLean, 309. Whatever might be thought if the question was an open one, it is too late to agitate it at the present time, as the rule is settled that the publication of an unauthorized but *bonâ fide* abridgment or digest of a published literary copyright, in a certain class of cases at least, is no infringement of the original. Phillips on C., 171; Newbery's case, Lofft R., 775; Dodsley *v.* Kinnersley, Ambler, 403; Whittingham *v.* Wooler, 2 Swanst., 428; Gyles *v.* Wilcox, 2 Atk., 141.

Strong doubts are expressed by Mr. Curtis, whether the definition of an allowable abridgment as given in the earlier cases can be sustained, except as applied to such works as histories, or works composed of translations, and others of like kind; but it was decided in this Court in the case of Folsom *v.* Marsh, 2 Story, 105, that an abridgment in which there is a substantial condensation of the materials of the original work, and which required intellectual labor and judgment to make the same, does not constitute an infringement of the copyright of the original author; and the Court, as now constituted, is inclined to adopt that rule in cases where it also appears that the abridgment was made *bonâ fide* as such, and that it is not of a character to supersede the copyrighted publication. Unless it be denied that a legal copyright secures to the author "the sole right and liberty of printing, reprinting, publishing and vending the book" copyrighted, it cannot be held that an abridgment, or digest of any kind, of the contents of the copyrighted publication, which is of a character to supersede the original work, is not an infringement of the franchise secured by the copyright. What constitutes a fair and *bonâ fide* abridgment in the sense of the law is, or may be, under particular circumstances, one of the most difficult questions which can well arise for judicial consideration; but it is well settled that a mere selection or different arrangement of parts of the original work into a smaller compass will not be held to be such an abridgment. Campbell *v.* Scott, 11 Sim., 38 and note; Gyles *v.* Wilcox, 2 Atk., 141; Folsom *v.* Marsh, 2 Story, 107. Substantially the same views are expressed in the case of Tinsley *v.* Lacy, 1 Hem. and Miller, 753; and the vice-chancellor in that case, in speaking of the authorities by which fair

abridgments have been sustained, go[illegible] say, that the Courts have gone far enough in that direction, and adds that it is difficult to acquiesce in the reason sometimes given, that the compiler of an abridgment is a benefactor to mankind, by assisting in the diffusion of knowledge. Viewed in the light of these principles, it is quite clear that the book of the respondent, even if it could be regarded as an abridgment of the prior editions, must still be held to be an infringement of the same; but the Court is of the opinion that it is not an abridgment of those editions, in any sense known to the law of copyright. Instead of being an abridgment of the prior editions, it is precisely what it purports to be a reprint of the text of the author, with notes by a new editor; and the proofs are full to the point that he was employed to edit a new edition of the work, to supersede the antecedent editions annotated by the complainant. Instructed as he was to make no use of the complaina t's notes, his principal defence still is, that he complied with those instructions, and that he did not make any use of the notes in his edition, beyond what is allowable as fair quotations from the published work of a prior author treating upon the same subject. Copying is not confined to literal repetition, but includes also the various modes in which the matter of any publication may be adopted, imitated or transferred, with more or less colorable alterations to disguise the source from which the material was derived; nor is it necessary that the whole or even the larger portion of a work should be taken, in order to constitute an invasion of a copyright. Some use may be made by a subsequent writer of the contents of a book or treatise antecedently made, composed and copyrighted by another person, in making and composing a new book upon the same subject, whether the contents of the antecedent book or treatise were wholly original, or were partly original, and partly made up of selections from other authors. Copyright differs in this respect from patent right, which admits of no use of the patented thing without the consent or license of the patentee. Persons making, using, or vending to others to be used, the patented article are guilty of infringing the letters patent, even though they may have subsequently invented the same thing without any knowledge of the existence of the letters patent; but the recomposition of the same book without copying, though not likely to occur, would not be an infringement. Coincidence, if perfect, is sufficient to prove the infringement of a patent, as the charge is that

the defendant, if it be a ma[illegible], has made machines in the similitude f the patented machine, and with the same mode of operation. Copying is essential to constitute an infringement of copyright, but identity of contents, arrangement and combination, is strong evidence that the second book was borrowed from the first, as it is highly improbable that two authors would express their thoughts and sentiments in the same language throughout a book or treatise of any considerable size, or adopt the same arrangement or combination in their publication. Reade *v.* Lacy, 1 Johns. & Hem., 526. Great difficulty attends every attempt to define in definite terms the privilege allowed by law to a subsequent writer to use without consent or license the contents of a book or treatise antecedently made, composed and copyrighted by another author; or to mark the boundaries of the privilege of such subsequent writer to borrow the materials in a book like the annotated editions of the complainant, where the materials have been selected from such a variety of sources, and where the materials so selected are arranged and combined with certain chosen passages of the text of the original work, and in a manner showing the exercise of discretion, skill, learning, experience and judgment. Decided cases are referred to where the principal criterion of determination is held to be the intent with which the person acted who is charged with infringement. Remarks to that effect are to be found in the opinion of the Court in the case of Cary *v.* Kearsley, 4 Esp. R., 170, and the decision in the case of Spiers *v.* Brown, 6 W. R., 353, refusing the application for an injunction, turned to some extent upon the same consideration; but the vice-chancellor (now chancellor) refused to apply that doctrine in the subsequent case of Scott *v.* Stanford, Law Rep., 3 Eq., 722, and explained the grounds of his ruling in the former case, which show that he would not sanction that rule in any case unless it appeared that the defendant had bestowed such mental labor upon what he had taken as to produce an original result. Evidence of innocent intention may have a bearing upon the question of "fair use;" and where it appeared that the amount taken was small, it would doubtless have some probative force in a Court of Equity in determining whether an application for an injunction should be granted or refused: but it cannot be admitted that it is a legal defence where it appears that the party setting it up has invaded a copyright. Cary *v.* Faden, 5 Ves., 23; Reade *v.* Lacy, 1 Johns. & Hem., 526; Bramwell *v.*

Halcomb, 3 Myl. & Cr., 738. Few cases have devised safer rules upon the subject than Judge Story. He held that, to constitute an invasion of copyright, it was not necessary that the whole of a work should be copied, nor even a large portion of it, in form or substance; that if so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially to an injurious extent appropriated by another, that is sufficient in point of law to constitute an infringement; that, in deciding questions of this sort, Courts must "look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale or diminish the profits, or supersede the objects of the original work." Folsom *vs.* Marsh, 2 Story, 116. Mere honest intention on the part of the appropriator will not suffice, said Vice-Chancellor Wood, as the Court can only look at the result, and not at the intention in the man's mind at the time of doing the act complained of, and he must be presumed to intend all that the publication of his work effects. Scott *v.* Stanford, Law Rep., 3 Eq., 723; Hodges *v.* Welsh, 2 Irish. Eq. R., 266. Twenty years before that decision was made, Mr. Curtis in his valuable work on the law of copyright expressed the same views, and this Court entertains no doubt they are correct. Curtis on C., 240. Recent decisions afford more ample protection to copyright than those of an earlier date, and they also restrict the privilege of the subsequent writer or compiler in respect to the use of the matter protected by the copyright within narrower limits. Express decision in Kelley *v.* Morris, Law Rep., 1 Eq. 697, is, that in the case of a map, guide-book or directory, or the like, where there are certain common objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to do for himself that which was done by the first compiler; that he is not entitled to take one word of the information published without independently working out the matter for himself so as to arrive at the same result from the same common sources of information, and that the only use he can make of a previous publication of that kind is to verify his own calculations and results when obtained. Rights secured by copyright are property within the meaning of the law of copyright, and whoever invades that property beyond the privilege conceded to subsequent authors commits a tort, and is liable to an action. None of these

rules of decision are inconsistent with the privilege of a subsequent writer to make what is called a fair use of a prior publication; but their effect undoubtedly is, to limit that privilege so that it shall not be exercised to an extent to work substantial injury to the property which is under the legal protection of copyright. Reviewers may make extracts sufficient to show the merits or demerits of the work, but they cannot so exercise the privilege as to supersede the original book. Sufficient may be taken to give a correct view of the whole, but the privilege of making extracts is limited to those objects, and cannot be exercised to such an extent that the review shall become a substitute for the book reviewed. Story *v.* Holcombe, 4 McLean, 309. Examined as a question of strict law, apart from exceptional cases, the privilege of fair use accorded to a subsequent writer must be such, and such only, as will not cause substantial injury to the proprietor of the first publication; but cases frequently arise in which, though there is some injury, yet equity will not interpose by injunction to prevent the further use, as where the amount copied is small and of little value, if there is no proof of bad motive, or where there is a well founded doubt as to the legal title, or where there has been long acquiescence in the infringement, or culpable laches and negligence in seeking redress, especially if it appear that the delay has misled the respondent. Sweet *v.* Cater, 11 Sim., 580; Tinsley *v.* Lacy, 1 H. & M., 752; Spiers *v.* Brown, 6 W. R., 353; Strahan *v.* Graham, 15 W. R., 487; Bramwell *v.* Halcomb, 3 Myl. & Cr., 738; Reade *v.* Lacy, 1 Johns. & Hem., 527; Jarrold *v.* Houlston, 3 Kay & Johns., 717; Lewis *v.* Fullarton, 2 Beav., 6; Bell *v.* Whitehead, 17 L. T., 141; Curtis on C., 326; Saunders *v.* Smith, 3 Myl. & Cr., 711.

Guided by the rules of law as already explained, the Court, after having examined the whole case with care, is of the opinion that many of the notes presented in the edition edited by the respondent, whose case is under consideration, do infringe the corresponding notes in the two editions edited and annotated by the complainant, and that the respondent borrowed very largely the arrangement of the antecedent edition, as well as the mode in which the notes in that edition are combined and connected with the text. Judge Story held, in the case of Emerson *v.* Davies, 3 Story, 780, that every author had a copyright in the plan, arrangement and combination of his materials, and in his mode of illus-

trating his subject, if it be new and [redacted]; and it was also held, in Greene *v.* Bishop, 1 Cliff., 199, that there may be a valid copyright in the plan of a book, as connected with the arrangement and combination of the materials; and no doubt is entertained that both those decisions were correct; but it is a mistake to suppose that a subsequent writer can be held to have infringed a book where he has not borrowed any of the materials of which the book is composed. New materials are certainly the proper objects of copyright; and old materials, when subsequently collected, arranged and combined in a new and original form are equally so: and in either case, the plan, arrangement and combination of the materials are as fully protected by the copyright as the materials embodied in the plan, arrangement and combination. Damages may be recovered in either of the supposed cases for the infringement of the property protected by the copyright; but the property in the latter case consists chiefly, if not entirely, in the plan, arrangement and combination of the materials collected and presented in the book, as any other person may collect from the original sources the same materials, and arrange and combine them in any other manner not substantially the same as that of the antecedent author. Barfield *v.* Nicholson, 2 Sim. & Stu., 6.

Detailed specification of the instances of infringement as shown by a comparison of the two books, would be impracticable, and will not be attempted; as the settled practice in equity is, where the works are voluminous and of a complex character, containing, as in this case, much original matter mixed with common property, the cause will at some stage of the case be referred to a master to state the facts, together with his opinion, for the consideration of the Court. Much the better course is to make the reference before the final hearing; but the parties in this case waived any reference at that stage of the cause, and elected to proceed to final hearing without any such report. Cases arise where the Court under such circumstances would not order a reference, but would proceed to compare the books and ascertain the details of the infringement; but the case before the Court is far too complex to admit of that course of action. Curtis on C., 325; Mawman *v.* Tegg, 2 Russ., 400; 2 Story Eq. Jurisp., § 941. Details have been examined as far as practicable, consistent with the claims of other official duties, but the judges are of the opinion that they should be further examined, and the

results classified, before the master proceeds to determine the extent of the infringement, as the danger of injustice cannot well be avoided in any other way. New matter of value has been collected and presented by the respondent, and he has added much that is valuable in his references to events which have occurred since the publication of the last preceding annotated edition. Whatever may have been the rule in the earlier history of equity jurisprudence, it is now settled law in this Court that a book may in one part of it infringe the copyright of another, while in other parts it may be entirely original and the proper object of a copyright; and in such a case it was held in Greene *v.* Bishop, 1 Cliff., 201, that the remedy will not be extended beyond the injury. Preceding that decision, the same rule had been adopted in Story *v.* Halcombe, 4 McLean, 315, in which the opinion was given by the late Mr. Justice McLean. Modern practice in the Chancery Courts of England is the same, as appears in the case of Jarrold *v.* Houlston, 3 Kay and Johns., 721, in which the opinion was given by Vice Chancellor Wood, since promoted to the office of Chancellor. Kelly *v.* Morris, Law Rep., 1 Eq., 701; Carnan *v.* Bowles, 2 Bro. Ch. R., 80; Curtis on C., 325. Suggestion is made that it will be impossible to separate that which is original from that which was borrowed, and to some extent the suggestion may be of weight; but the Court is of the opinion that the difficulties in that behalf, when the matters pass under the searching examination of a master, will be much less than is apprehended by the parties. Should the difficulty in any instance or class prove to be insurmountable, then the rule in equity is, that if the parts which have been copied cannot be separated from those which are original without destroying the use of the original matter, he who made the improper use of that which did not belong to him must suffer the consequences of so doing. If a second writer mixes the literary matter of another, which is under the protection of a copyright, with his own, without the license or consent of the proprietor, he must nevertheless be restrained from publishing what does not belong to him; and if the parts of the work cannot be separated, so that the injunction prevents also the publication of his own literary production so mixed with that of another, he has only himself to blame. Mawman *v.* Tegg, 2 Russ., 390; Lewis *v.* Fullarton, 2 Beav., 11. Extended application of that rule, it is believed, will not be required, in view of the proofs exhibited in the record,

and of the facilities afforded by the comparison of the notes in the respective editions to separate what is original from that which has been copied.

Attention is called by the respondent to the fact that some of the notes in the edition edited by him are entirely original, that in others the material copied is much condensed, or the notes reduced to a mere reproduction of the authorities cited in the prior edition, and that other notes have been enlarged and improved by the addition of new matter, and in view of those circumstances, he contends that the edition edited by him should be regarded as a new and original work; but the decisive answer to the first and last suggestion is, that no man is entitled to avail himself of the previous labors of another for the purpose of conveying to the public the same information, even though he may append additional information to that already published. Scott *v.* Stanford, Law Rep., 3 Eq., 724; 2 Story, Eq. Jurisp., § 940; 2 Kent, Com., 382–3; Cary *v.* Faden, 5 Ves., 25 and note; Wheaton *v.* Peters, 8 Pet., 591; Bramwell *v.* Halcomb, 3 Myl. & Cr., 737.

Additional remarks in respect to the alleged fact that the contents of the notes copied were condensed, is unnecessary, as it is quite clear, as before explained, that the change made in that behalf is not of a character to afford the respondent any defence.

Supported by these reasons, the conclusions of the Court are as follows:

1. That the complainant in a Court of Equity is the equitable owner of the notes in the two annotated editions described in the pleadings as arranged, and the mode in which they are combined and connected with the text.

2. That the title to the entire text, together with the title to the memoir and indices, is in the proprietor of the book, and not in the complainant as alleged in the bill of complaint.

3. That there are notes in the edition edited by the respondent of substantial importance in point of number and the value of the materials which do infringe the equitable rights of the complainant, as explained and defined by the Court.

4. That all the respondents had notice of the claim of the complainant, as explained and defined by the Court.

5. That there are notes in that edition of substantial importance in

point of number and the v[illegible]he materials which do not infringe any rights of the complainant.

6. That the notes in that edition consisting wholly of citations found in the corresponding notes of the complainant do infringe his rights, as explained and defined by the Court, though many of them are unaccompanied by the extracts collected and presented in the next preceding edition.

7. That notes consisting of authorities or collections of authorities copied in like manner as described in the preceding proposition, and without remarks or comments, do also infringe the complainant's rights, though they are found inserted in, or prefixed or appended to, notes otherwise not objectionable.

8. That notes of which the whole or some substantial and material part is condensed from the corresponding notes in the preceding edition, or from the extracts therein printed and published, without any marks of original labor, or of any such labor except the study of the note copied and adopted, do also infringe the complainant's rights, as explained and defined.

9. That notes wholly original do not infringe.

10. That notes partly original and partly copied from the preceding edition do not infringe, except for the matter copied, if it be practicable to ascertain and define the separate proportions and make the separation of the same; but if not, still the respondent, at the proper stage of the case, must be restrained from using the part copied.

11. That the cause must be referred to a master to examine the pleadings and proofs and report the extent of the infringement as adjudged by the Court in this investigation, and also to examine and ascertain what, if any, other instances of the alleged infringements within the principles here explained are proved; and if any, to classify the same, and report the details, together with the reasons for his conclusions, for the consideration of the Court.

12. That all other matters in the cause will be reserved until the coming in of the master's report.

13. That the cause is referred to Henry W. Paine as master, for his examination and report in the premises, in conformity to the opinion and directions of the Court.

Equity suits for the infringement of a copyright are usually referred

to a master before the final hearing, to ascertain whether the charge is proved, and, if so, for a report as to the nature and extent of the infringement; and in such cases the general rule is, that the complainant, if he prevails in the suit, is entitled, if at all, to an injunction at the time the decretal order is entered, to restrain the respondent from any further violation of his rights, as the whole case is then before the Court. Even when the case is heard before any such reference and report, if the charges of infringement are few and of a character that the extent of the infringement can be conveniently determined by the Court without sending the case to a master, the Court, if the case be one where an injunction is the proper remedy, will order it at the same time that the decision is announced upon the merits. But where the cause comes to a final hearing without any such report, the Court, if the charges of infringement are numerous and of a character to require extended examination before the extent of the infringement can be ascertained, will ordinarily send the case to a master for further examination and report in respect to all matters not previously adjudged by the Court; and the general rule in such cases is, that the injunction will not be granted until the nature and extent of the infringement are fully ascertained and determined, as its effect and operation might work great injustice. Obviously the present case falls within the latter rule, and therefore an injunction will not be ordered until the Court shall have acted finally upon the report of the master.

~~A true copy:~~ Opinion of the Court

Attest: ~~JOHN G. STETSON, Clk.~~

John G. Stetson

Clerk

William B. Lawrence
Esqr.
Rich'd H. Dana Jr. read

Opinion of the
Court.

U.S.C. 3 1869
Map Dist. No. 16
Filed by order
of Court.
Attest:
John J. Stilson,
Clerk

Lille Piège

Circuit Court of the United States,
Massachusetts District.

In Equity.

William Beach Lawrence

vs.

R. H. Dana Jr. et als.

Supplemental Answer

Counsel for Complainant
B. R. Curtis — J. J. Lowell

Counsel for Respondents
For Rich Wealth — Sidney Bartlett, T. K. Lothrop,
For Little, Brown & Co. — Charles Browne
For R. H. Dana Jr. — W. G. Russell

Paid in pamphlet usual size
of Records — 3 folios - one of which is with
the evidence taken by Stenog.

U. S. Circuit Court.
Dist: of Massachusetts

In Equity

Wm B. Lawrence v R. H. Dana jr et als.

And now the said Little, Brown & Company, defendants, by leave of Court, amend their answer by striking out therefrom each and every part which avers or admits that the notes or memoir or any new matter in said editions of said Elements published in the years 1855 and 1863, or that either of said editions, so far as they contain matters not contained in the previous editions of said Wheaton's Elements, published in Philadelphia, were duly copy-righted by said Catharine Wheaton, and by adding to their said answer after the words "inconsistent means and contrivances of the Complainant", at the end of paragraph 15 on page 45 of the printed record, the following:- 15 a. These defendants, upon information obtained since their former answer and belief thereon arising, say: that although true it is that the said Catharine Wheaton and the said Lawrence during all the negotiations mentioned & referred to in said bill and answer and up to the time of the filing of said bill, did understand and believe that the notes of said Lawrence and the memoir of said Henry Wheaton published in the said editions of the said Elements published in the years 1855 and 1863 and both of said editions so far as they contained matters not contained in the previous editions of Wheaton's Elements published in Philadelphia and also so far as they contained matters already published in said editions, were duly copyrighted by the said Catharine Wheaton and that the copyrights thereof were operative and valid, yet

that in law and fact, as they are advised, no part thereof was duly copyrighted by the said Catharine Wheaton by any copyright purporting to be taken by said Catharine in either of said editions or by any other act or thing by her done in relation to said editions, nor was said Catharine legally entitled to take said copyright in either of said editions as proprietor of the contributions of the complainant thereto, by reason whereof and of the acts and misprisions of said Catharine Wheaton in relation to said copyright specified in the Complainant's bill, and which these defendants admit, there was not at any time during said negotiations any valid and existing copyright in any of the complainant's said contributions to either of said editions; and these defendants submit to the Court that all the negotiations referred to in the Complainant's said bill were founded upon a mistake common to both the parties as to the character and existence of the subject matter of such negotiations, and that if the same resulted in any agreement which a Court of Equity would otherwise enforce, (which these respondents deny,) that such agreement, if any such agreement was ever perfected and is still in force, (both which these respondents deny,) is, by reason of this mistake, wholly void.

And these defendants by leave as aforesaid further amend their answer by striking out therefrom the section numbered Seven, beginning on page 38 and ending on page 39 of the printed record, and inserting instead thereof the following." And these defendants upon information and belief, derived and learned from and upon the deposition of said Complainant given since their former answer was filed, and letters produced with said deposition admit and aver that in the year 1863, the said Brockhaus proposed to pay to Mrs. Wheaton

the sum of six thousand francs in full satisfaction of the moral or honorary obligation he was and would be under to Mrs. Wheaton, (as the widow of Mr. Wheaton) in respect of said Brockhaus' editions of Wheaton's Elements published since 1848, and of certain future editions which he might publish thereof, and that at or before the time of making such proposal the said Brockhaus had been put in possession of the advance sheets of the said American edition of 1863, with a view to such future editions; and, upon information and belief derived and formed as aforesaid, they deny that the motive and object of the said Brockhaus in proposing to pay said money, were as stated in the bill of complaint, or that the said payment of six thousand francs was proposed to be made by said Brockhaus, in consideration of anything done or to be done by the complainant; and on the contrary thereof, they aver upon information and belief derived and formed as aforesaid that the said Brockhaus did not know, until informed by complainant's letters that there were any surviving relatives of Mr. Wheaton, and that as soon as he heard this fact, and it was suggested to him that it was proper to make them some honorary payment for the editions he had published abroad since 1848, he immediately acquiesced therein, and also in the propriety of making similar payment for the editions he might afterwards publish; and also on information and belief derived and formed as aforesaid aver that as matter of fact the proposal of said Brockhaus to make said payment of six thousand francs was procured by the mere representation to said Brockhaus of said existing facts in regard to the representatives of Mr. Wheaton, and by the transmission to him, Brockhaus as

aforesaid of the said advance sheets of said American edition of 1863, for publication by him in Europe with the countenance of the said Wheaton representatives, and under conditions and stipulations in his, said Brockhaus', favour, not in any way involving any editorial labour of said Complainant; and that the Complainant, having ascertained the willingness of said Brockhaus so to make such payment to representatives of Mr. Wheaton in respect of past and future publications in Europe of editions of his Elements of International Law, fraudulently represented to said Catharine and induced her to believe that no payment could be obtained from said Brockhaus without his, the Complainants, mediation and upon his order; and upon information and belief obtained and derived as aforesaid these defendants allege that the said Complainant, at the time when the said Brockhaus had so received the advance sheets of the edition of 1863 and was ready to pay the said sum of six thousand francs, as aforesaid, to the said Catharine Wheaton, and knowing said facts, did, for the purpose of obtaining from the said Catharine Wheaton the pretended agreement in said bill mentioned, falsely allege to the said Catharine Wheaton that the said Brockhaus would not pay the same without his, the Complainant's consent, and falsely alleged that, as consideration for such payment, it had been agreed between himself and the said Brockhaus that the said edition of 1863 was to be thoroughly revised for publication by him, Brockhaus, which would take from six months to a year,

and the said payment would be made only upon his, the complainants', undertaking to make such revision, and that the said Catharine Wheaton, in ignorance of the facts, and induced only by such false representations, (which were then known to the said Lawrence to be false,) did thereupon enter into the negotiations in said bill alleged to have taken place between the said Catharine Wheaton and said Complainant; and these defendants submit to the Court here that if the said negotiations resulted in an agreement which a Court of Equity would otherwise enforce, (which these defendants deny,) yet that the said agreement, if any such was ever perfected and is still in force, (but which these defendants deny,) by reason of said false and fraudulent allegations of the Complainant in procuring the same, cannot be enforced in a Court of Equity.

And now the said defendants, Willis Brown & Co come and move the Court for leave to amend their answer heretofore filed, in conformity with the foregoing

by their Solicitor

Charles Brown

Oct 30 1867

Laurence et al.

v.

Dana & others

Proposed
Amendments
to answer of
Little, Brown & Co.

Motion to amend

may be filed as
of October 20. 67
by Thomas
for complt

U.S.C.C.
Mass. Dist. } Nov. 5 1867
Filed in Clerks Office
Attest: John G. Nelson
Clerk

Lawrence
vs
Dana & others

Stipulation to
enlarge time
for answer

Lawrence vs. Dana.

Time for taking answers
may be extended fifteen
days -

J. G. Stevens
for Complt

T. K. Lothrop, Esq
Miss Martha B. Wheaton -
Wm Russell
for R. H. Dana Jr
Caustin Browne
for Little, Brown & Co.

USCC 3 1866
Mass Dist
Filed in Clerk's Office
Att: J. G. Stetson
Clerk

United States Circuit Court
Massachusetts District } Oct. Term 1867
Nov. 11th 1867

In Equity:

William B. Lawrence vs R. H. Dana Jr. et al

Ordered, ~~that Parties account Hearing,~~ that the Complainants open his case on all points; that the Respondents reply on all points on which they are now able to reply, that the Complainants close on all points upon which the Respondents now reply: that the Respondents reply in writing on all points on which they do not now reply orally on or before ~~February~~ 13th 1868 and that the Complainants close in writing upon the points argued in writing by Respondents on or before ~~Feb. 1st~~ March 10th 1868.

By the Court.

John G. Allen

Clerk

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William B Laurence

et Exors

Rich^d H Dana Jr et al

Order of Court

Nov. 11th 1869

U. S. District Court
District of Massachusetts } In equity.

=

W. B. Laurence

v.

R. H. Dana Jr. & others

=

And now the respondents before the hearing move the court for leave to put in evidence the letter of F. A. Brockhaus to Miss M. B. Wharton, dated April 29. 1863, of which a copy is hereto annexed

Causten Browne
Sol^{r} for Little, Brown & Co.

T. K. Lothrop
Sol^{r} for Miss M. B. Wharton

[Copy.]

Leipsig, April 29, 1863.

Miss M. B. Wheaton, Cambridge, Mass:

Dear Miss, — In replying to your much esteemed favor of March 5th, I have the honor of referring you that I have given all necessary communications directly to Mr. W. B. Lawrence, as authorized by yourself, for treating with regard to the new edition of the "Elements du Droit International" Mr. Lawrence will be kind enough to inform you with all particulars which are to be taken into consideration at this transaction. I restrict myself therefore to give you notice that I am well disposed to pay the sum of four thousand francs for the right of adjoining to my French edition of the work all the annotations of the new American edition, and of printing the number of three thousand copies divided into two subsequent editions of the "Elements" and the one of the "Histoire," which I have printed since 1847. I beg to observe that I am willing to pay the sum of 2000 francs, although the laws of our own country are not compelling me to pay for new editions, if there has not been made a special reservation on this subject at the time of the publication of the first edition.

You may be convinced by these proposals of my loyal conception of the matter, in particular because I could make use of the new American edition, and without any compensation, for there is not existing any treaty between the United States and Germany securing literary copyright.

I suppose you will agree with my offer of paying once for all, the sum of 6000 francs, and therefore I hope to be favored with a consenting reply.

I beg to state moreover, that I had never before any knowledge of their being direct inheritors to Mr. Wheaton, and it needs not to assure you especially that otherwise I should have done my utmost for settling this affair in a former time.

I have the honor to remain, Miss,

Your most obedient servant,

F. A. BROCKHAÜS.

Wm B Lawrence
in equity
v.
R. H. Dana & others

Motion for
leave to put in
evidence the letter
of Brockhaus &
Miss Thurlow
April 29. '63

Lawrence v. Dana et al.

Report of Master



To the Honorable the Judges of the
Circuit Court for the District of Massachusetts.

The undersigned, Special Master, in the
matter of William S. Bond & others v. Richard H.
Dana Jr. et. al. having duly weighed the pleadings and
having read and heard the proofs and argu-
ments, respectfully submits the following report

The complainants claim that the rules
in the last edition of Wheaton's International Law
ought to be equitable rights within the meaning
either of the first, the second, the third or the
fourth rule in the decree of the Court and divided
those rules accordingly into four classes.

The Master is advised that the Honorable
Court did not mean to be understood as deciding
that a violation by the respondent identical with
one in a corresponding rule of the Complainants was
necessarily an infringement of the rights of the
latter, but that it might be an infringement upon
sufficient evidence. There is also a matter
in the respondent's rules besides the violation.

It must be remembered that Q. was to govern
by his rules a period of eighteen years, since Wheaton
published his last edition in 1846, eighteen years of
which had been covered by the general and exhaus-
tive rules of the complainant. It is apparent there-

[illegible] and a large proportion of the citations must be
[illegible]

Direct and positive proof can be given for the greater
number of the citations, as can be found in almost
[illegible] books, is not attainable. For the difficulty, that
if the man had the book, on which, as he is reading,
he could depend to verify and forge and remember
the words, it would be impossible for him to fulfill
the task. Authors do not undertake [illegible]
[illegible] but do not attempt to state, as
a matter of fact, that he consulted the originals
of all the citations which he found in books.
"Indeed", he proceeds, "A man who is in the
habit of reading and writing, without speaking language
has a group of citations at the end of each paragraph,
many which he has never seen, and which
perhaps no human person has ever seen."

All the Shakespeare commentators I consulted in bed
and in manuscript evidence. The impression I made
that he had referred to perhaps one hundred
[illegible] two hundred and one citations, scattered over [illegible]
and including colloquial verses, proverbs, [illegible] expressions,
diplomatic letters or technical terms, — that he had
four hundred and seventy citations to authors, and

[illegible] cited by S. [illegible] exclusively adjudged cases [illegible] Statute, [illegible] the corresponding sections, that [illegible] two hundred and three adjudged cases nowhere in S. as in Wheaton, twenty-three of which are recitations, leaving one hundred and eighty one new cases; that S. contributes one hundred and sixty-nine recitations to adjudged cases not in Wheaton, of which thirty-one are re-citations, leaving one hundred and thirty eight new cases contributed by S.,- that D. has sixty-four citations of cases in Wheaton which are not in S., which D. has used for purposes other than as used by Wheaton- (of these sixty four, sixteen are re-citations) that D. has fifty four (54) adjudged cases, which though in S., are not impeached,- that D. has one hundred and twenty two notes at places where S. has no note,- that D. has one hundred and two notes at places where S. has a note, but where Wheaton had fixed a note, that of these eighty seven (87) are at the ends of chapters or sections, that of D's two hundred and fifty eight notes all but thirty-four are either where S. has one or where Wheaton as well as S. has a note.

It also appears that D. reduced Wheaton's text - reducing the number of sections from two hundred and thirty four to five hundred and fifty one. Wheaton's sections were numbered anew for each chapter, while D's sections are numbered continuously. In all Wheaton's

the sections seem to be entirely as shewed by those
D. was obliged to make new cross-references in every
instance. Wendland's sections were numbered anew for
each chapter, while D's sections are numbered continu-
ously. D has gone even so far as to add titles to two
hundred and two sections. This was outside of D's
contract. Of D's notes one hundred and twelve are
not imperfect.

There are typographical errors in some of the
citations in L. which are repeated in D. The fact
is cited as an showing that D. is fully transcribed from
L. and did not consult the original. This is un-
doubtedly the testimony of this fact. But the Master
has not regarded it as conclusive, for it might well be,
that a man having taken with him to a library, a cita-
tion found in L. or any other writer, and having found
the place and the doctrine which he was seeking, would
still be correct the erroneous citation.

L. in many of his notes has referred to authorities
in manuscript, and he testifies that he has examined
them and found. And there has been no attempt to
rebut the inference, to be drawn from this testimony.

The Master has assumed that the burden of proof
as to the complainant to show, inquiry by the Respondent
and in doubtful or nicely balanced cases, he has allowed
much weight to the evidences of study and labor on the
part of the second annotator where he has found them.

The Master was directed to frame as briefly as possible the questions raised as to each of the notes assigned, dividing them into four classes, and to state the proofs and counter proofs relied on. In many cases he has ventured an opinion after much hesitation.

First. Vol. 12 p. 31. W. H. ... of the ... of the ... "Sovereign Powers ... of Negotiation" D. ... "On the ... rights and duties of a power ... to ... the Neutral and a weight of ... See Wheat. § 52.

Wheaton ... D. has a right of ... at the same time. Vol. 11 p. 31. The States retain ... their own territorial limits and ... Cases ... Wheat. § 52.

... the citation the entire note is a quotation.

... other authority quoted ... Wolsey. The topic ... and the ... by L. and ... by D. In the ... of this ... L. ... Heffter alone and so does D. ... appears that L. in his note 67 p. 179 of ... p. 96, cit. Heffter, Droit Int. Law § 139. Duke of Brunswick v. King of Hanover 6 Beav. 1. 2 Hc. of L. 1. D. in his ... at same place, 66 p. 156 cit. note. The ... W. P. H. says D. has not cited Heffter except ... L. has

D. cited by him but ... of Heffter.

Second. Vol. 11 p. 33. Wheaton says "The ... rights ... of the United States of America are ... from the ... and ... themselves" for ... and ... States" and that the ... of ... of 1782 contained a recognition of them ... and

and a good deal of it. At the end of the paragraph the case of "Brown's Reports IV 312. No "Livingston v. Cox", is cited". At the same place D. cites the case "Harcourt v. Gaillard 12 Wheat 529". At the same place he cites the case of Rose 1 st 15 p. 37. It is an extract from a digest of W. B Lawrence to the Case of Rose, and the several statutes, not a citation of Wheaton's reports. To an attention to this note p. 527. Wheaton's Reports XII. p. 527. Harcourt v. Gaillard is cited. At the top of the page of the work is printed.

We Dunn I find that it was my intention to state No "Livingston" as a case as I had the writing of my "Memorandum" and finding the case upon the margin to be very full addendum sufficient and effectual. I noted in my copy reference to the supplement to Peters. But at the foot of the page 527 which contains the first of the cases to. The case commences on p. 523.

Third Ed. 23 p. 35 Wheaton in the text speaks of the Republic of Paraguay as Dictatorial. I have taken it from Austin as one of the same country as the United States. At the foot of the page in note Wheaton

At the foot of p. 23 "In the Dec Cur of Virginia it was decided. A citation and nothing more.

In this ed. 26 p. 45 at the close of the first para "I have no longer a question as to Paraguay. In note Dec Curiae Vattel Book 3 ch note 2". For these reasons there as remain

...subject among the sovereign States.

The note referred to by Watts is attached to § 19. This note runs over to the next page which is page 20 and on this page is the note.

This note of D. was written over an original note of L. and with L's note underneath it. There are two other authorities equally pertinent. Neither are cited there.

Fourth. Not. 60. p. 256. The Author denies a position to "the exemption of the persons of the foreign sovereign from the local jurisdiction." To this note at the end of the section D. says for a case of a foreign sovereign also a subject in the courts of this forum see Duke of Brunswick vs. King of Hanover, House of Lords cases 11, 1. Westlake's Pr. Intern. Law § 137.

In the Westlake case L. has a note to the first of the text. Some half dozen pages made from this p. 199 the Author speaks of embassy chapels of which in 1868 one existed in Finsbury [illegible] and the King of Spain. All this [illegible] I have a note (69) of the foreign office. In the text, authorities are cited to show that no jurisdiction can be brought against the effects of any kind belonging to a foreign government. If the ambassador and his suite refuse to leave the premises and not to those whose duty it is to enforce it is necessary to make a [illegible] the court

In the second paragraph, he quotes some sixteen lines from Wheaton on the Duke of Brunswick & King of Hanover 6 Bing. N. C. 6 Bing. 37. S. C. 2 Hr. of L. 21. L. vide W. Stats. B. Inter. Law § 137.

In the rest of C. the Authors in the first paragraph of L's note would have been out of place.

Fifth. Vol. 10.3 p. 251. Wheaton says, "the first should be the numbers which have given by the American Government, new decisions took place when the two governments, which must be settled by treaty concluded at Washington in 1846".

D's note at this part is "H. S Docs. 1 Sess. 29th Cong. IX. 109, 369". Not at the same word but at the end of the paragraph L. has a note of Instructions vol. 101 p. 319. He says "H. Ex. Doc. State Papers vol. IX, p.p. 109, 369. See for the negotiation of 1841 Senate Documents 1846 p. 524. Affs. I. 256; 30 Thers of 1849-1 Calhoun's Works vol V p. 1101. See Mr Calhoun's speech in the Senate Dec. 16th 1846, on the resolution giving notice of the abrogation of the convention of joint occupancy. Pb. vol IV p. 258"

The next and last part of this note is devoted to another subject. Here D. found the word "cession" to be more than once the word by the United States and this is all he has done. Whether he took it at the

[illegible] be certainly known.

Sixth. Note 120 f. 291. "Mr. Austin says" [illegible] declaring and maintaining that [illegible] States are governed in [illegible] will command [illegible] new States would [illegible] Country".

Of this is attached to the last. From [illegible] note Mr. recognition of indefinite [illegible] intervention [illegible] and recognition of the Empire Mr. adds" [illegible] March 1845. Mr. Wheaton to Mr. Rives of [illegible] Mr. Rives to Mr. Rives of [illegible]

I have a note of two pages at [illegible] vide 117 p. 376. [illegible] with foreign States were a [illegible] sovereign [illegible] if [illegible] Agreement [illegible] Mr. Buchanan to Mr. Rives, 21st March 1845 citing "Despatch of Mr. Wheaton of [illegible] of June 12th 1832 [illegible]

Mr. Wheaton to Mr. Rives [illegible] Doc. 19 and a short extract [illegible]

C. M. L. Wm. Rep. 17 July 1833 vol. Dept of State Mss. H. is requested to read the dates as the same is bold, as to the date of the Ex. Mss till as given by D. is 1863.

Two of these Mss are by L. quoted from Manuscripts. D. does not say where these Mss may be found.

Seventh. - Vol 134 f. 323. The Author says" a public minister accredited to one country is not to the territory of another making known his official character - - - is not entitled to avail himself of the permission implied from the absence of any prohibition as would be the sovereign himself in a similar case. The note of D. is attached to this portion of the text and merely says, "see also Klüber Droits des Gens § 176"

The Author has a note at same place referring the reader to a former article. Attached to the same word L. has a note of nearly a page, vol 119 f. 421. He says that as the State to which a public minister is accredited is obliged to secure to him the protection of the law of Nations, citing Wicquefort liv 1 sec 17. The letters & messages must be passed through country also immunities of a foreign public minister as the passage through the country, citing Rutherforth "Inst. des Gens § 176 vol 2"

The remainder of the note is devoted to the case of

the State, entitled to the land which was described in
Clause one of Art 1854. I refer the to the Klamath
R. does not

Eighth. At the foot of p. 111 "The Court says" the re-
lation of the treaties could not be dissolved by the bel-
ligerent act of the treaties could not be dissolved by the bel-
ligerent act of one party without the consent of the other
tions, then the act of a municipal law may be regarded
as properly entered into the premises."

"In the 1st (1) attended this rule" see Cranch
Chinese Wheaton's Rep. vol II, 277.

"The usual phraseology in the case of the kind is, "Com-
pacts & treaties were abrogated by the war between
both and Treaties of 1812, it would not
follow that the right of property vested
under those treaties could be divested by subsequent
hostilities."

In this letter and in Chinese a note of
three lines. Feb 15th 1811. The copy of the
of the provisions of the treaty of Ghent in the
treaty of 1806 with Spain which was signed by
and which is right upon, I am told by the
Supreme Court of the United States that a right once
vested does not cease to be protected by the
existence of the former treaty which created it. The
provisions also specified at the end of the note
by Wheaton's Rep. Vol II, 277. Cranch in Chinese

"Even if there were indications that the treaty

of the rule is the "gauge of the Court, which is the test.

South. 11 Wheat. 141 f. 348. Mr Chief Justice says the Court (supreme) therein established that "Prizes, ships and goods are not rights and general arrangements for possessing the aim of perfect title, and to deal with the case of war as well as of peace do not come into the occasion of war but are at most suspended while it lasts" ------ "and revive upon the return of peace".

At this point the Claim has a note in which he cites "The Treaty for the prosecution of the Court of foreign Courts vs. The Court of the Seven Nations Ref. VIII, 1164 and says the same principle was asserted by the English Court of Chancery vs. Sutton - Sutton Russell v Meadows Ref. 1, 66.3

At this point in D's note is a reference to page 220 Phillimore's Int. Law. III 471 Twiss Law of Nations 1, 336.

At the same point I have a note of cases, note 15 f. fn. 469. The quotation here contained from the opinion of Sir J. Leach in Sutton v. Sutton, states the conclusion and cites Jones Law of Nations Vol. 1, fn. 336, Phillimore's International Law Vol. 3 fn. 671. The citations of Phillimore and Twiss are correct. Both these books were in D's hands.

That D might have obtained the citations from S. is certain but there is no other reason than the fact that S. cited them first

Tenth. Vol. 221, p. 534. "It (i.e. the case) was a note says" a pamphlet was published on the occasion of this controversy between the British and United States Governments by the late Lord Liverpool (then Mr. Jenkinson) entitled a discussion on the conduct of Great Britain in respect to Neutral Nations during the present war" which contains a very full and instructive discussion of the question of Neutral Navigation."

Qu's note at the same place in the text is "see the letter of Mr. de Rayneval to Mr. Jenkinson. Rayneval "Liberté des Mers tom. 1 p. 232"

At the same place I have a note of four lines in which he says "The discourse of Lord Liverpool is examined with great ability and the principles of neutral navigation vindicated in M. de Rayneval's Liberté des Mers tom. 1 p. 232. A French translation of Lord Liverpool's entire pamphlet is given in the second volume p. 1005 with notes by M. de Rayneval."

Qu might have cited Rayneval on that looking beyond p. 743 of L. Though he would have done so did not in using the word letter, there is no evidence that he did not use de Rayneval's book.

Eleventh. Vol. 220 p. 553. At the end of the section on "Armed Neutrality" the letters are cited in which are several citations.

At the end of D's note says "see also Wescott's Am. Diplomacy (New York 1852) and Lord Mahon's History of England VII. 46".

At the corresponding L. has a short note on p. 227 f. 745. This is the note. Lord Mahon in his note to his History of England Vol. VII p. 46 (Leipzig Ed. 1851": Besides the many other writers on the "Armed Neutrality" I would recommend to English readers an account of it in the unpretending but useful and very able volume, recently published by Mr. W. H. Wescott in America" (Diplomacy of the Revolution. New York 1852)

L. = the Diplomacy of the Revolution.
D. = Wescott's Am Diplomacy.
L. gives the edition of Mahon.
D. does not
L. it would seem refers to Mahon, not as an authority.
D. does. He has a brief account of the Armed Neutrality. Mahon's after all was not cited for the same purpose by both.

Of these Eleven note the master finds Mahon alone sufficient - omit note the eighth. It also does not appear that the letters of Mr Everett to Mr Rives and of Mr Buchanan to Mr Bates have been included - I retain Supplement of Notes Nos. D and keep carefully where they may be found -

Notes of the second class.

First note 2 pp. 3

Q. in this note refers to "Moores Ancient Laws 17, 59".

Twiss Intern. Law 2-3. Marezoll Lehrbuch des vol. des vorn Rechte § 13. Wheaton 58, 7 Int. edition 882, 4, 7, 10.

L. has a note at some place of Stowell note 1 pp. 3. He quotes two sentences and cites Twiss on International Law 1 pp. 2, 3. He quotes has two sentences not in quotation marks and cites Marezoll Lehrbuch der inneliberen des vorrischen Rechtes § 15.

Q has cited four writers - two of whom had not published when L's edition went to press - and two cited by L.

It appears that Q first wrote Twiss on International Law - and then Twiss' Intern. Law.

Second Vol. 15 p. 214.

This note of Q is one large to 7 Belligerency & nearly four pages. He quotes two pages and a half to a dissertation on the subject, then gives a summary of the correspondence between Mr. Adams and Lord Russell and adds "see further on this subject Mr. Bemis pamphlet - the recognition of Belligerency Boston 1865 Letter of W. Forsyth (Westminster) London Times March 2d 1865 Lord Lyons to Lord J. Russell April 22d 1861, Mr. Bright's Speech March 23d 1865.

Earl Russell, April 23 1863, Proclamations of President Lincoln of 15th and 19th April 1861 and Lord Lyons 17th April 1861 and of Queen Victoria 13th May 1861.

"Mr Manning" as to the recognition of belligerency by France and England in the American Revolution, see the correspondence between J. Adams and Earl Russell, - the Annual Register 1776 p. 182 183 - 1777 p. 211, Wait's State Papers I, 11, Perkins Lafayette to Mr. Pike 1st Sept. 17th 1861 M. S. Dip. Corr. 368

Mr. Manning also refers for a recognition of our belligerency by Denmark during the war of the Revolution and the demand for compensation for "Prize goods" given surrendered by Denmark to England, see Sparks' diplomatic correspondence III. 121. Sparks' life of Franklin VIII 467-462. M. S. Laws VI 61. State papers III 1 Despatch of Mr. Wheaton to Mr. Upham Jan 1, 1843."

He further says. During the civil war between Spain and the South American Colonies the belligerency of the latter was recognized by the United States U. S. v. Palmer, Wheaton's Reports III, 610. La Divina Pastora 4 Mason IV, 52, Nueva Anna 4 Mason VI, 193. So in the case of the civil war between Texas and Mexico. Mr. Forsyth to the Mexican Minister Sept. 21, 1836. Opinions of Attorneys General 1st. III. As to U. S. recognition of Greeks during war with Turkey, see Lord Russell's speech May 6th 1861. Mr. Manning

to Lord Granville June 22, 1861. Hansard's Life of Canning 476, also as to belligerent rights of the South American Provinces see the British Colonial Secretary's July 23, 1821. Canning's Life 397. British Annual Register 1823, 116.

L has a note of twenty four lines attached to the next succeeding paragraph at the end of note 16 p. 110 and on page 178 an addendum to line 17 page 14.

On page 111 L says to the same effect Mr. Adams minister to London, in a dispatch June 14, 1861 to the concession of belligerent rights to the Confederate States, at any rate there was no remonstrance. He had heard the Government of the United States "was responsible for any misdeeds of the rebels towards Great Britain &c." Papers relating to foreign affairs p. 89.

L says if the foreign State accepts belligerency in its insurrection, it "frees the parent State from responsibility for whatever may be done by the insurgents as not done by the parent State unless the insurgent power extends." Mr. Adams to Mr. Seward June 11, 1861. Dip. Cor. 105.

It is hardly possible L could have taken the gist of the note from L. Applicable paragraph Dicta Mr. Canning to Lord Granville of the Foreign Office June 23rd 1823, but does not say where the letter is to be found.

In the addendum L has an extract from the Ex.

ning to Lord J. Russell June 22nd 1826 citing Hafferton Canning and his times p. 476.

The citations, some twenty in number, that are found in the last three paragraphs of D. not are all found in L's note except two citations of Canning's Life.

At the end of the fifth paragraph D. cites 17 Peters 591 Prentiss v. Brennan - The title of Kirkman - Mr. Wright's speech and Earl Russell's which first appeared in 1865, after the publication of the last edition of L. D. also cites letter of Lord Lyons to Lord J. Russell April 22 1861, proclamations of President Lincoln of 15th and 19th April 1861, of Jefferson Davis 17 April 1861 and of Queen Victoria 13 May 1861. These are not in L.

For the letter of Baron Van Zuylen to Mr. Pike D. cites U. S. Diplo. Corr. 365.

For this letter L. refers to papers relating to foreign affairs accompanying President's Message 1861 p. 355.

Third. Vol 97 p. 231. Wheaton says the House of Lords determined that the Scottish Courts had by the law of that country a sufficient jurisdiction to decree a divorce between parties actually domiciled in Scotland, notwithstanding the marriage was celebrated in England. But the Court did not decide what effect such a divorce would have, if brought in reality in question in an English court of justice

At this place, D. adds this note. "Story's Conflict of Laws §§ 200-227; Ferguson on Marriage & Divorce 383-422, 283-319, 350-356. Heffter Europ. Volker. § 37. Westlake Pr. Intern. Law § 350."

At the end of the following paragraph of the text L. has note 96 p. 295 in which he says a foreigner validly divorced in his domicile of origin, cannot contract a new marriage in a country where divorce is abolished, citing Heffter Das Europaische Volkerrecht § 37. He speaks of the French law of 1816 which abolished divorce; says Merlin contends that a jurisprudence which really reduces the means of divorce without condemning the marriage of a divorced person ought to have been taken to accept the status of a foreigner who has been lawfully divorced in his own country; but the Royal Court of Appeal at Paris in 1824 held otherwise citing Westlake Private Inter. Law § 350 p. 332.

L. also cites Merlin Questions de droit Divorce § 13.

There is no satisfactory proof that D. did not consult the works which L. cites. And it cannot find that either of these notes infringes the complainants' equitable rights

First. Note c p. 16. The Author says "Heffter does not admit the term international law (droit international) lately introduced and generally adopted by the most recent writers. According to him this term does not sufficiently express the idea of the jus gentium of the Roman jurisconsults. He considers the Law of Nations as a law common to all mankind and which no people can refuse to acknowledge, and the protection of which may be claimed by all men and all States.

D says the French translator of Heffter, M. Bergson has entitled his work Le Droit International Public de l'Europe and Heffter has said that he did not intend the construction put upon his language by the Author. He considers International Law as a phrase to express that portion of the Ancient idea of jus gentium which related to the intercourse and obligations of independent States with each other.

L in his note at the same place. Note c p. 15 says, "Heffter intimates that he has not been clearly understood by one author. In his late editions he refers for his views to those sections of his work which treat of rights as applicable to nations as well as individuals. The fundamental principal, ubi societas ibi jus est declares that States admit as obligatory on them only those laws which

result from reciprocal consent, though this consent to be valid does not require the formal sanction of treaties nor the express confirmation or promulgation of what is established by usage. Das Europäische Völkerrecht §§ 2, 3. The title which Mr. Geffcken has given to his French translation of Heffter, published under the auspices of the Author, in Berlin and Paris in 1857 is Le Droit International public de l'Europe.

It is apparent that D. might have invented the title of the French translation from L. And it is possible that he had consulted the book. He does not say that the translation was published under the auspices of Heffter, a material fact. He may have known that fact only as it was stated in L. and therefore, presumed it to be covered that the translator would not adopt a title offensive to the Author.

The statement in D that "Fiorelli considers International Law as a proper term to express &c" could hardly have been taken from L. whether right or wrong.

D. testifies Heffter was one of the works he was in the habit of consulting.

Second Note 7 p. 21. L. in his note at the same place, note 3 p. 20. shows how the term International Law originated, - what, different publicists have said about it, - who have objected to it and who have adopted it.

D. treats the question as one of nomenclature. He observes that the English language has but one word by which to express the two ideas which the Romans expressed by jus and lex, and the French by droit and loi &c.

The object of the two annotators is different. Their manner of treating the subject is different.

The citations are in a cluster at the end of D's note and all are found in L's note except Wooley and are substantially in the same order, though all L's are not in D's.

Third. Note 7 p. 48. L's note 20 page 32 is at the same place. To illustrate the doctrine of the text he refers to the case of Texas and "says the English Government instructed their Minister to call the attention of the Texan Government to the treaties between Great Britain and Texas and to remind them that the voluntary surrender of their independence by the Government and people will not annul those treaties". Similar representations were made by France through M. Saligny,

charge d affaires citing Earl of Aberdeen to Mr. Eliot. Senate Doc. 29th Cong. 1 Sess. Vol VII No. 375.

D says the separation of Belgium from the kingdom of the Netherlands and the change wrought thereby in the relations of Holland with the great powers were held by the United States to justify it in withdrawing from an agreement to accept the King of the Netherlands as an umpire on the north eastern boundary question. When Texas agreed to unite itself to the republic of the United States, France and England notified her that she did not cease to be bound by her treaty obligations with those powers. citing Lord Aberdeen to Mr Eliot Dec 3rd 1845. Sen. Doc. VII 375.

The latter part of the note might have been written without looking beyond L's note. The first sentence not taken from L's note is said by complainant to be a mistake. He did not take it from L. The withdrawal was on that ground matter of public discussion.

Fourth. Note 18 p. 49. The Author says as to public debts, whether due to or from the revolutionized state - a mere change in the form of Government or in the person of the ruler does not affect their obligation.

L. has a note at the same place, note 21

pp. 53 - of nearly two pages. He gives a brief history of the annexation of Texas - states the terms - and the fact that a claim by an English holder of a Texas bond was presented to a mixed Commission and was rejected and gives the reason for its rejection. He states what provision was made for the payment of the public debts on the separation of Belgium from Holland and what were the provisions of the Treaty of Zurich by which the greater part of Lombardy was ceded by Austria to France and by France to Sardinia, touching the assumption of the public debt.

He refers to the causes of intervention.

D. gives a sketch of the history of annexation of Texas to raise the question whether the United States were not bound to pay the public debt, though on the rescission of annexation the United States were in no event to pay her debts. He argues that the United States were bound.

D testified that he read the Commissioners report. He gives the name of the English bond holder, James Holford, which he could not have got from L's note.

He says the United States reserved 10,000,000 to be paid pro rata to the holders of the Texas bonds upon their issuing Texas lands. This he might have got from L's note

In the next case D. refers to Art 1 of treaty of 1839 for the separation of Belgium and the Treaty of Guiet adding Luxemburg to Germanic Confed. cites the 2 Art. of the treaty of 1839 and refers to Law Mag. Square 1839. He also cites the treaty of Zurich but does not say in which article, the stipulation is claimed to be found. L. has violations which D. has not

Fifth. Vol 17 p. 52. The Court says "As to wrongs and injuries done to the Government or citizens of another State, it seems that no strict principle, the nation would be responsible to that State for the damages incurred for such wrongs and injuries, notwithstanding an immediate change in the form of Government, or in the persons of its rulers". He refers to cases where this principal was applied

D says in a note of four lines and a half, "The British and French Governments made declarations or 'Warnings' against the use by Portuguese subjects vessels owned by British subjects, during a civil war in actual possession of the rebels. The treaty of the only [illegible] Great Britain. France and Spain of Oct. 31, 1861 and Secretary Seward's instructions to Mr. Wyke 1861 American Register 1861 p. 216."

At the same time I do not agree
note 22 p. 57. It is not clear that there is
any resemblance between these two cases. But it is
contended that Dr. ... was taken from Wheaton
5.3 p. 139 of two pages and his note 59
p. 173 of four pages to neither of which is there a
cross reference in note 22. The last paragraph
of his note 59 W. says "and it will be recollected
that the declared object of the most important
treaty between Spain, France and Great Britain
is not only a fulfilment of the obligations con-
tracted toward their Majesties by Mexico," but
"a more efficacious protection for the persons and
properties of their subjects."

The reclamations, which apart from those founded
on contract, Great Britain presents in this case, arising
as they do from the seizure of moneys, even from
the house of the British Legation, made by the
opposing factions while in possession of the capital
and during a civil war are strong illustrations
of the necessity of the rule that holds a State
always liable for the acts of its de facto authorities.
Earl Russell instructs Sir C. Wyke March 20 1861
that Great Britain does not recognize any party
as constituting the Republic in its dealings with
foreign nations. but holds the entire Republic
responsible &c, &c, vide supra p. 57 Cobbett note

53 // 157-9.

The use of the words [illegible] the words underscored [illegible] the tripartite treaty - and to the instructions to Sir D. Wyche, are false & are showing D's note was taken from L.

The respondent replies that he could not have found the date of the Tripartite Treaty in D's note for it is not there.

The complainant rejoins that at the end of his note he has a cross reference to Vol. 53 pp. 157-9, and the date of the treaty is found in that note. To this it is answered that the date is not found on page 157, 8 or 9. It is in fact found on page 151. D. cites Ormond's Register not found in L.

note 21 p 55 The Author specifies Moldavia Wallachia and Servia as annual semi-sovereign and dependant States

D's note covers about a third of a page; he states as the result of the various changes in the Condition of the principalities, that in 1861 Moldavia & Wallachia were formed in to one province under the name of Roumania or more commonly Moldo-Wallachia with one legislature and one Hospodar. The United Legislature met in February 1862. The Suzeraineté of Turkey continues &c.

As to Servia it was settled by the Treaty of Paris of 1856 that it should be under the Suzeraineté of the Porte, but with an hereditary Prince

After the campaign of 1862 Turkey insisted on her sovereign rights over Montenegro and provinces by a convention to which the prince was compelled to agree that Turkish garrisons should be received in the Country. The convention recognises the Suzeraineté of the Porte &c.

L has a note of four pages on the same place - Note 24 p 62 - and an addendum p 979 of two pages, in which he has given the political history of these principalities. The citations of D are all found in L; note & addenda.

L cites (p 979) Almanach de Gotha 962.966. While D gives the year 1862

It appears that opposite this note of L in D, copy these words were written "substance of this note". But it is very clear that he has not given an understanding to give the substance of this note.

It appears that D in his copy of L made a copy of from the foot note to the addenda, and that after the first paragraph of his note was

written out, he interlined the words The United Legislature met in Feb 1862. L says p 999 "the first common Legislative Assembly was held February 5th 1862".

D at the close of his note tells Lord Russell to the English Ambassador at St Petersburg Sept 30 1862 - L says (p 999 note) Lord Russell, in a note to the diplomatic representative of England at St Petersburg under date of September 30 1862 &c. It appears that the English Ambassador Lord Napier was absent, and the person addressed was the diplomatic representative Mr Buchanan.

It would be here stated that D has withdrawn from his practical knowledge of the condition of these principalities from a case in Moore's P C Reps which he was obliged to study in preparing the prize cases of the Bay Warwick in 1862 and that when he came to the subject in Wheaton, besides reading the text and d's notes, he turned to that case and read the subject up in other writings, and in the Encyclopaedias and in the Latest British Monthly journals as well as in the Annual Registers so as to get the latest information. Record p 397.

Though L does not give the year in citing the Almanach de Gotha, he gives the year 1862 as the year when the fact occurred for which he cites it. The Almanach for 1863 p p 962. 966 contains the matter referred to.

Growth

note 22 p. 56

The Author gives the condition of Monaco down to 1815

D says "Sardinia had included the Commune of Monaco in Nice; and when Nice was ceded by Italy to France, the Prince of Monaco, by treaty of 2 Feb 1861 ceded his entire territory, except the city, to France, for a pecuniary indemnity."

L in his note at the same place - note 25 p. 64 - says "Sardinia having ceded to France the County of Nice, by which Monaco was enclosed, the Prince of Monaco, by a treaty of 2d of February 1861 granted for a pecuniary indemnity to France all his territory except the city of Monaco. These districts had been previously annexed by Sardinia to Nice and included in her cession to France."

Neither L nor D cites any authority.

~~The [illegible] of the both notes is the same [illegible]~~

Both notes give substantially the same information

The principality consisted of three Communes, Monaco Mentone and Roccabruna. Here "District" says L "Commune" says D. and so they are called in Appleton, Encyclopedia which D. cites and relies upon.

The phrase "pecuniary indemnity" is found in both.

Eighth

note 25 p 61 The author says "it is thus that the King of Prussia is also sovereign prince of Neufchatel, one of the Swiss Cantons".

D says "the independence of Neufchatel was recognized by Prussia in 1857 and it is now simply a Canton of the Swiss Confederation".

This point, accompanied by a history of the Canton, is [illegible] from the pleas of D's note

stated by L pages 111, 2. The point is again stated by L pages 476

The index of L [illegible] Neufchatel refers to both these pages.

The point is also found in the American Cyclopaedia, which I assume has constitutes.

Ninth

note 28 p 70 According to the text, "the Diet has the power to regulate the commercial intercourse between the different states and the free navigation of the rivers belonging to the confederation" &c

D says "the duties of to commerce and free navigation have not been prescribed by the Diet, but by a Zollverein, of which Prussia and nearly all the German States are members and in which Austria is indirectly included by the operation of a treaty with Prussia".

L has a note at the same place. note 3 6 p 82, from which it is said D, note is taken. That is not said in L that the Zollverein has anything to do with free navigation; or that the treaty makes Austria a party to the Zollverein

Zurich

de 29 p 72

The Author says that "Whenever one of the sovereigns" (of the German Confederation) "undertakes a war in his character of a European power, the confederation, whose relations and obligations are unaffected thereby, remains a stranger thereto".

D, note is less than half a page. He says that during the Italian war of 1859, Austria invoked the 47th article of the final Act, on the allegation that the territory within the confederation was threatened by France and Sardinia. Prussia refused to consider that war as a matter affecting the Confederation . . . The appeal to the federal contingent being put on a war footing. Prussia remonstrated against any construction which carried the Union beyond a purely defensive combination. Citing Annuaire des deux Mondes 1859. Annual Register 1859. Then follow some reflections on the theory with the remark that recent events have combined to maintain the guarantees of the Confederation.

At the same place L has a note of nearly a page - Note 97 p 85. After stating that it was the 47th article of the final Act that was invoked by Austria on occasion of the Italian war in 1859 he quotes from Baron Schleinitz - and Prince Gortschakoff - and from Baron de Brenkj reply and citj. Annuaire des deux Mondes 1859-9-Vol 5 pp 6, 1009, 107.

The note of D & appr the concluding sentence might have been written from L's note. L cites only the Annuaire D cites the Annuaire and the Annual Register. D, finding nothing relating to what has taken place since L, written was published.

Eleventh

ste 33 & 87 The text refers to "abortive attempts since 1830 to change the federal pact" (of the Swiss cantons) "of 1815"

At this place D has a note of some importance here. He says that on the 12th of September 1848 a new constitution was adopted having the same general character with the preceding and things giving more powers to the Confederation, while not coming within the definition of a Bundesstaat; says the federal legislature has two houses — the national Council and the Council of States — the former is chosen according to population. The latter is composed of two deputies from each canton. A federal council of seven is chosen by the legislature for three years. which has charge of foreign affairs and certain of cantonal duties. Having the powers of the confederacy. The confederacy has no army, but can organize the contingents of the cantons when called into service. Referring to his note 25, repeats what he had then said of the autonomy of Prussia over Neufchatel being abrogated.

This only contradicting by the Annuaire 1850 & 87. Constitution Fédérale Suisse

L has a note at the same place of a page and a half - note 44 p 109. The first speech of an annual Landamman of three Cantons being formed - which was declared by the Diet to be illegal - At the same time he says the Tagsatzung was incensed by a decree directing the Expulsion of the Jesuits from three Cantons. That these Events were not without their influence upon the subsequent occurrences of 1848 - He says that on the 12th September of that year a new Constitution was voted by the Diet -
He gives a very full account of this Constitution - an Enumeration of the powers conferred on the Confederation - citing the Annual Register 1847 p 370 - the Annuaire 1850 p 37 - Texte officiel de la constitution federale Suisse p p 4.16.22
He adds that it was only in 1857 that the annexation condition of Neufchatel ceased - gives the political history of the Cantons - citing Martens par Samwer -
D says "the federal Council of three is entrusted to the negotiations in which its members have taken a part" This I do not find in L, note - ~~but the addition to the note by D is apparent.~~
D; note (written this afterwards) might have been written from the note & addendum of L.
L, note is much fuller and more particular than D; and has some citations which D has not

Wright

note 35 p. 91 The Author says "the absolute right to erect fortification within the Territory of the State by denouncing some modification of treaties, when the Erection of such fortifications has been deemed to threaten the safety of other communities".

At this place D has a note of two lines. "By the treaty of Paris of March 30 1856 Russia and the Sultan agree not to establish or maintain any Maritime arsenals on the Shores of the Black sea"

L has no note at this place. In his note 108 to 330 he copies several articles of the treaty of Paris - in one of which his Majesty the Emperor of all the Russias and his Imperial Majesty the Sultan engage not to establish or to maintain upon their coast any military Maritime Arsenal".

L; refers in many pages distant from D's but L's Index, has "Fortifications regulated by treaty, 116 — of Russia in Black Sea", 330

On page 118 D gives a synopsis of the Treaty - parts of which are not in L.

The Entire treaty is found in extenso in Phillimore pp 713–833

Thirteenth

vol 37 p 116 D is a historical note of thirteen lines.

L has a note of seven lines on the same page - Note 48 p 129.

The two notes have nothing in common. To his note 48 L has an addendum of three and a half pages. pp 991 - 994

D refers to the treaty of London of Nov 20" 1852, as being between Great Britain Russia France Bavaria and Greece. Now then, Great Britain Russia and France as the three powers who guarantee the independence of Greece, and then the almost unanimous election of Prince Alfred of England was declined. These facts are not found in the addendum, so far as I have discovered.

article 1 case

Fourteenth

vol 38 p 118 Intervention in the Ottoman Empire is the subject of this note which covers a page. It states some of the moving causes of the intervention in the affairs of the Ottoman Empire - that Great Britain and France intervened on behalf of Turkey - that Sardinia afterwards joined the alliance - that the result of the war was the Treaty of Paris of March 20 1856, between Great Britain France Russia Austria Prussia, Sardinia and Turkey - that article VII of the treaty declares the sublime Porte admise à participer aux avantages du droit public et du concert Européens - gives the substance of several

of the articles of the treaty — says, 4 a treaty between Great Britain France & Austria signed at Paris 15th April 1856 whereby jointly and severally guaranty the independence and integrity of the Ottoman Empire, as recorded in the Treaty of Paris 30 March 1856 — says, 5 a supplementary treaty of Paris March 30 1856 — between Great Britain France Russia Prussia and Austria as parties to the Treaty of London of 13 July 1841 and Sardinia as a new party, on the one part and the Sultan on the other. the Sultan agrees to admit to the waters of the Bosphorus &c and on the same day the Czar & Sultan made a convention fixing the armament and tonnage of the respective Black sea Empire for coast service in the Black Sea.

It is claimed that the matter of this note is found in L pp 131, 151, 65, 23, 330-1, 349, 477 with one or two trifling exceptions — that fact may be found by looking at L's index under Turkey. The French of D's note is in Engelhardt I pp 23.

It is true that most of the parts stated by D may be found in the pages of L specified — but note also — E.g. the material in dispute from D's quotation from Art VII of the Treaty of Paris.

D's note is principally drawn from the Treaty of Paris — 30 March 1856 and the Treaty of Paris 15th April 1856

the supplementary treaty of Paris of March 30 1856 and

the convention between the Czar and the Sultan of the same date, are all in Phillimore pp 810 — 1433.

Zeiler

vol 39 p 120 This is a note of nine lines. L has at the same place a note of a page - note 50 p 132 - His first paragraph is a translation of eleven lines from Neffter § 46.
D in his own language gives the substance of Neffter, citing § 46.
L says "The same is the case for States as individuals. If is permitted an individual to fly to the assistance of his neighbors, when their existence or fundamental rights are threatened, for a stronger reason must it be permitted States to do so". Citing Neffter § 46
D says "Neffter applies that the right of States is, like that of private persons to fly to the assistance of neighbors whose existence or fundamental rights are threatened".
Each uses the plural "Neighbors" while Neffter uses the singular "ton prochain" - D cites Europäische Neffter § 46
L says "if is permitted one individual to fly to the assistance"
D says "the right of States is like that of private persons"

Oppenheim

vol 40 p 120 This is a note of nearly a page and a half on "Mediation"
L has a note at the same place of less than a third of a page - note 51 p 133 - L points out the difference between Mediation and arbitration citing Garden Traité de la diplomatie tom I p 436 note. By way of illustration he refers to the [illegible] reference of N & Lowndes question to the King of the Netherlands - citing Ann Reg 1830-1 p 146; and calls attention to the

with Expense of the plenipotentiaries to the Congress of Paris that States before appealing to arms would have recourse to the good offices of a friendly power, citing Martens tom II p 767.

It refers to many cases of intervention - cases where mediation may offered and accepted or refused - The note contains some twenty citations of treaties despatches &c all of which with the exception of a despatch, two cited for citation in L, Edition are in L pp 133. 139. 494. 495. 493. 140, 500 and addenda pp 1009. 1012. 1027. 1028. Under the word mediation in L, index the pages are referred to. All the cases of intervention and mediation mentioned by D are found somewhere in these pages.

[redacted]

There are indications of D, having read beyond these pages of L

D says The Emperor of Russia offered to mediate in 1812 between the United States and Great Britain. In this case he did not offer himself as an arbitrator whose award the parties would agree to accept, but as one who by persuasion of the parties, after Examining into the controversy should give advice & recommendations. This gratification of the Emperor's offer of mediation found in L

Again D says "The Emperor offered himself as an arbitrator in the difference as to the construction of the Ghent treaty of peace respecting the restoration of captured Slaves"

2 vol p 445 - "The friendly offices of the Emperor as an arbitrator & mediator were

subsequently investigated in a case occurring under the direction of Dr. Lewis 1814"

The order of the calculations is very much alike in both

And while there known two other cases of frozzfrost mediation and other cases of intermittent I cite more than one such in L.

naturalt

ii 491-142 A note of four pages on "Naturalisation", which is the subject of that section of the text to which it is attached

At the same place L has a note of four pages - note 59 p 173. and in his appendix he has a note on Naturalisation and Expatriation of thirty nine pages, beginning on page 891

In his second paragraph D says "It is the English doctrine however that the obligation of allegiance is for life. Yet De Vergé says of the English doctrine, that it is "the creature of municipal law and finds no countenance in the Law of Nations, as it is in direct conflict with the incontestable rule of that Law". Law of Nations 1, 231"

On page 918 of L is found a longer extract from Twiss which Embraces that of D. The only difference being that L's extract says of the English doctrine, that it is "the creature of civil law" L. Extract is in the language of Twiss. Twiss Law of Nations Vol I ch IX §160 p 231

In his third paragraph D says "In the United States the disinclination of the judiciary has been to follow the English Common Law, and to hold that subjection a nation was a natural and indefeasible allegiance without consent of the State." For this he cites 1 Kents Comm 11, 49. Story on the Constitution III, 3 note 1 Wharton's State Trials 654. Opinions of Attorney Generals VIII, 139.

On pages 919, 920 L cites the same authorities and gives a quotation from Kent in the same order.

D in same paragraph says "No man can renounce allegiance to a Country in which he continues to reside, whatever forms he may go through. For this he cites Daly on Naturalization 26.

On page 921 L gives an Extract, which contains the position of D and cites Daly on Naturalization p 26.

D gives an Extract from a letter of Mr Clay to the United States Minister at Berlin of July 8 1854. A longer Extract from same letter Embracing the Extract of D, is found on L, pages 918. 919.

D gives the substance of Attorney General Black, opinion in the case of Koszta, a Hungarian, naturalized in the United States.

L page 921 gives an Extract from this Opinion, which contains the views of D. Wharton tells where the opinion may be found.

D says in the war of 1812 Great Britain threatened to punish as traitors its native subjects, naturalized in the United States & taken in Arms. This was met by the arrest of British Officers & hostages with a threat of retaliation which settled the question practically for the time. The British Government afterwards including them native Britons in the Cartels of Exchange. Citing Annual Register 1813 p 190. 1814 L 102

L page 924 says during the war of 1812 great Excitement prevailed in consequence of the massacre of the Crew of Spanish naturalized citizens of British origin who manned the British privateers. The retaliating measures of the American Government in selecting as hostages an Equal number of British Officers was followed of putting in close confinement American

offering to decide the question of the right to answer for the safety of
1 Each nonintervening territory. The whole question was settled without any han-
guring any remark, by withdrawing all parties in the Conduct of Political Exchange.
Citing Annual Register 1913 p 190. Ib 1914 p 162.

D says Mr Webster, while minister at Berlin, declined to intervene to
protect a Prussian subject, naturalized in the United States and returned to
Prussia, from Military service - Then quotes from a letter from Mr Webs-
ter to Mr Wright July 29th 1840.

On page 925 D quotes Mr Webster as saying "I have no hesitation in
declining to intervene in the manner requested". Then follows the
Extract as given in D. He gives the date of the letter July 29 1840 - citing
Senate Ex Doc No 34 - p 7.

D says Mr Everett made to Mr Brassard Jany 14 1853 - and gives
an Extract.

L on pages 925, 926, says the views of Mr Webster were sanctioned
in the instructions of Mr Everett to Mr Brassard of the 14th Jany
1853 - giving an Extract which Embraces those given by D.

D says Mr Webster when Secretary of State held, the general rule is
a Country does not acknowledge the right of a Nation to renounce
his allegiance, it may refuse its claims, if he is found within
its jurisdiction

L says at page 926 Mr Everett, note was accompanied by one from
Mr Webster When Secretary of State from 1st 1842 to the Effect

that "if the Government of a Country does not acknowledge the right of natives of that Country to renounce their allegiance it may lawfully claim their services when found within its jurisdiction."

D says the Case enclosing a letter written by our Minister at Berlin July 9 1859. and gives an Extract. The portion says "the Prussian Government refuses to admit the distinction set up by the United States between incorporate and unperfected obligations, when a permit to Emigration was not obtained, and claims an unlimited authority over its naturalized subjects." Baron Manteuffel to Mr Fay Oct 22 1852

I page 926 gives the Extract from the Case to the Envoy at Berlin as D gives it. He gives an Extract from the letter of Baron Manteuffel to Mr Fay Oct 22, 1852 from which it appears that the Prussian Government does not admit the distinction set up by the United States. And he states that though neither Prussia nor the other German Governments admitted the reasoning of the American Secretary, yet in practice usually refrain exercising the right, nor to enforce regulations against the naturalization of the United States. He D says "For the documents cited above see Senate Ex Doc No 37. 36th Cong 1st Sess p. 47. 49. 54. 135. 167. Mentioning the references. D in his fourth paragraph, says another question has been mooted between the United States and Prussia, as to the rights of Naturalized Prussians, who left Prussia under a permit of Emigration

to return to Prussia and made them American citizens within the terms of the treaty of 1828. In such case, the Prussian government claims the right, at its discretion, to order the person out of the Country & to put restrictions upon his residence. Baron Manteuffel to Mr Wright Nov 9. 1857 & on page 927 has an extract from the letter of the Baron to Mr Wright Nov 9 1857 which contains the position of D; for this Cabinet department of State MS D in his fifth manuscript says a similar question arose between Prussia and the United States in the case of Michael Zickle in 1859-60. The Prussian government claimed military service from Zickle, on the ground that he had emigrated and naturalized himself, before he had satisfied the obligation of military service that lay upon him by law. The United States government contended that the rights of Prussia did not extend to Military duty, the performance of which had not been actually demanded of him before his emigration. The prussian subject to serve in the army is not sufficient. The obligation of contingent duties, depending upon time, contingencies or events that may often to occur is not recognized. Correspondence between Mr Marcoux & Count Wallenstedt Nov 1859 and the 2nd Jan & Mr Thouvenel April 1860. The case of Zickle came before the French judicial tribunals and was decided in his favor.

On pages 927, 928 & has an extract from a letter of Count Wallenstedt to Mr Calhoun, chargé d'affaires in answer to one addressed to him at the Cape, under of Mr Marcoux the Celt Minister at Paris - Nov 25. 1859 Dept of State MS.

L has also an Extract on page 324 from Mr Faulkners Dispatch 1760 addressed to Mr Monroe in reference to the case of the Naturalized citizen (Alexander Lidius). This Extract includes the Extract of D.

L says in Manner the acquisition of a case of this description, instead of being as in Prussia, a matter of administration, belongs to the judiciary. He then gives an Extract from Mr Faulkners letter to Mr Cass in which the writer says Lidius had been discharged by his writ of habeas corpus D says "Brain entitled for an unlimited right over the returned subject for subsequent as well as past obligations. The case of Savino de Siano. Senate Doc No 34 36th Cong p 167.

L on page 324 gives a copy of a communication from the Captain General of Cuba to the Consul General of the United States at Havana which fully sustains the position of D. citing Cong Doc 36th Cong in his seventh paragraph D says during the civil war in the United States the charge was confined to citizens naturalized and "persons of foreign birth who made known declared on oath their intention to become citizens" United States Laws XII. 731. and also such persons were for a time prohibited from leaving the Country.

L on page 8 of his Supplement says the Act Enacting the Conscription Act approved March 3 1863 provides that all able bodied male citizens of the United States and persons of foreign birth who

declared on oath their intention to become citizens thereof and in pursuance of the laws thereof - - - - - are hereby declared to constitute the National forces and shall be liable to perform military duty in the service of the United States Sec. Statutes at Large 1462-3 & 731.

The next paragraph of D. note is a citation of citations Treaties on the subject of Naturalization "Fiore Droit Intern Privé 1. 91-105. Klüber, Comm. 1 Lect. 4. Wooley, Introd. § 66 Phillimore Intern Law 1. 350-354. Foelix Revue Française et Etrangère 11. 324. Martens Nouveau Recueil 11. De Brauer Traité de la Naturalisation. Westlake Priv. Intern Law. Fiore Law of Nations 1 189. New American Cyclopaedia XII Naturalization. Mappin Encyc. Brockhaus 1 Ed 1 84.

Some of these citations are in L - some are not.

The next paragraph of D is devoted to "Cases arising out of the bombardment of Greytown". It says the rule was adopted by the United States and acquiesced in by the British & French Governments. That a person taking up a residence in a foreign place and his property suffers them by reason of belligerent acts committed against that place by another foreign nation he cannot have remuneration from the Latter nation by the intervention of his own sovereign.

He must take the Character of the Country in which he chooses to reside and in living in it draws to his protection by acts of hostility committed against that Country, his only claim, if any, is against the Government of the Country of his residence, in which his own Sovereign exists not in hostile hostility. The citizen that makes a citizen domiciled abroad can represent of his own Government is to be treated as his commissions are made against him in the belligerent acts of the Nation attacking him because of the nation under whose protection he is residing. See Mr Marcy's reasoning of State to Mr Bartigny July 26 1857, Enclosed & Doc Nos. and Lord Stanley of Lord Palmerston and the Attorney General in Parliament in June and July 1857. Hansard, Park Debates CXLVI 37-49, 1045.

See p. 173-4-5 2 has expressions & thanks from the letter of Mr Marcy to Mr Bartigny, July 26th 1857 and from the Speeches in Parliament of Lord Palmerston & the Attorney General - citing Doc & Doc Nos 4-7-35 Cong 1st Sess and for the last two Hansard, Park Debates 3rd Series vol CXLVI pp 37-49. See Index & Table and find the pointing of D- & what have last pointed in the Last Section.

See his reply to Lord Clarendon's despatch and claims were made growing out of the bombardment of Greytown and how they were met and disposed of. See this he cites no authority.

2 on page 173 omits the substance of a portion of Mr Marcy's letter in which the pointing of the treatment of these claims is like D; But there is no mention made of the Powers as there is in D.

The next paragraph of D is devoted to the case of Martin Rouse
The substance of the paragraph is found on pages 196. 229 of L
Both refer to the letter of Mrs Nancy to Mr Nelson.
D's next and last paragraph gives the history of Simon Fanshaw's case.
citing Corry Doc 33 Corry: & Doc No 41,
On page 229 L gives an extract from the letter of Mrs Nancy
to Mrs Jamieson Chargé d'affaires at Vienna which contains
the substance of D, paragraph - He cites Corry Doc 33 Corry 1st Sept
H R. & Doc No 41

L 218 and D 143 quote the same words from a letter of Mrs Cass to Mr Wright
of July 8 1859. From and the close of the same note. L 226 D 144 there is
quotation from a letter of Mrs Cass to Mr Wright, in which both give
the date of July 9th. In Mrs Doc 38 & 1 35, the anthority which both
cite, there is a despatch of July 8 which contains both the passages
quoted.

L page 200 and D page 145 cite Dr Beaudant. The reference is to Mr
Beaudant.

L page 224 and D page 145 quote the same passage from a note of
Mrs Jamieson to Mr Thompson, omitting the same three words
Both have "by" instead of "hand" in the original.

D cites Daly on Naturalization - and afterwards says" on the subject of
Naturalization, see among others New American Cyclopaedia XII Natur-
alization. The argument is, if he had been there, he would have known

thing were the same thing. But how do I know they were the same thing, he might have reply to both, for the reader might have access to one and not to the other

Leasehold

note 53 p 151. D says "By the Act of 1894 & 60 Vict ch 46 "No assignment mortgage contained in Scotland of declaration, acknowledgment, or agreement shall be valid unless one of the parties had at the date thereof his or her usual place of residence there, or had since in Scotland twenty one days next preceding such mortgage". Stephen's (Edinburgh) Commentaries II. 269.

L, note as the same place. note 62 p 141, big in ipsis initio verbis.

D directs the printer to print from L; note. But he cannot undertake to say that he compared L; note with the Statutes in any other book. Though he has seen a many books as have come in which these parts of the Statutes may be found. In the absence of proof, it is difficult to believe that he would take the trouble, to look further

Vanderwerk

vol 55 p 151 There is a note of twenty two lines attached to the end of a section of the text which says. "A marriage of a Frenchman within the required age, will not be regarded as valid by the French tribunals, though the parties may have been above the age required by the laws of the place where it may contracted"

It says the Court in 1861 refused to found their order in the case of the marriage of Jerome Bonaparte to Miss Paterson contracted in the United States in 1803. Jerome Bonaparte had not attained the required age, and opposite motive of his civil ability had been given to the parents of the bride before the marriage. The Pope refused to annul this marriage on the application of Napoleon I. Jerome notwithstanding married a princess of Wurtemberg, his American Wife being alive. The case arose on a claim by the sons of the American Marriage. Jerome Napoleon Bonaparte, to a share in the division of his father's Estate. The French Laws would have no effect out of France. Story, Conflict of Laws § 80.

The refers to the British Royal marriage Act and says that under this act the Marriage of the Duke of Sussex may have been void in England. See Westlake P2 Private Law § 348.

The says British Statutes give the same validity as is obtained in England. to Marriages solemnized abroad in the Chapels or Houses of Ambassadors or before residents ministers or Chaplains in the Army within their lines. 4 Geo IV and 12 & 13 Vict:

A Statute of the United States of 1860 gives Efficacy to Marriages before

American Cases, as if Celebrated at home

The words "For the details of the decisions of the conflict of laws respecting marriages. see Bishop on Marr. & Div. § 125-. Story; conflict of Laws § 113 Opinions of Attorneys-General (The States) VII. 22

L has a note at the same place of nearly six pages - note 644 to 182 - where the legal positions and all the facts in D are found in this note and to see all his citations.

Nothing refers to any authority for the decision in the case of Mr. Brownsville's marriage.

For the Sussex Peerage case L cites Annual Register 1844 p. 345 And in the next section, to show the principles of the Royal Marriage Act, quotes five lines from Westlake Pr. Int. Law § 344.

D at the end of his remarks on this case says see Westlake Pr. Int. Law § 348. That section does not contain a word about this case - but a note thereto informs the reader that the Sussex Peerage case is reported in 11 Cl & F 85.

L p. 183 says The Pope refused to annul this marriage on the application of Napoleon. For which he cites Phillimore, Comment. Int. Law Vol III. p. 28 D says The Pope refused to annul this marriage on the application of Napoleon I. § The same language is found in L. note

Twentieth

vii 67 / 175 This is a note of two pages on "Impressment of Seamen".
L has a note of four pages on the same phrase - Note 72 p 214.
D's historical facts are found in L, note, and also last three of his citations. D cites and quotes from Professor Ramsay and he cites Webster's World VI. 325 giving a short definition. And he also refers, for the diplomatic history of the subject, to Parliamentary papers 1809-29. These are not in L.
His manner of treating the subject is strikingly different from L's. His note shows thought and study - and may even be called original.

Twenty first

vii 64 / 178. This is a note of half a page attached to the end of a section of the text which treats of "Consular jurisdiction" D begins his note by saying that Abbott's United States Consular Manual 1863 gives the treaties statutes and regulations bearing upon the rights and duties of Consuls. He states the general principle running through our treaties which are entering the jurisdiction of our Consuls. States what special jurisdiction is conferred on Consuls by particular treaties. He remarks that there are no treaty stipulations between the United States and Great Britain, respecting the arrest and detention of deserting seamen and that the

Last attempt at such an arrangement failed because of Great Britain desiring to exclude slaves from the treaty which was objected to by the United States. See Cass to Mr Dallas Oct 8th 1860. See treaties with France (United States Laws X 992). Prussia, Portugal Belgium Netherlands Russia Sardinia, Spain Austria Sweden. Two Sicilies, the Hanseatic Towns and with Mexico and all the States of South America. Morocco. Turkey China Siegris and Tunis (United States Laws VIII. IX. X; also Act of March 2. 1829 Life X 860 and treaties with Japan, United States Laws XI. 723, Persia 4th 709. Siam 4th 693.

2 has a note of seven pages at the same place - note 74. p 223 - a note of three and a half pages - note 73 p 219 and a note of two lines referring to his note 73 in his addenda page 1002.

On page 221 2 says "In March 1855 Mr Buchanan submitted a project of three articles to Lord Clarendon who proposed to substitute the accession of the United States to the foreign enlistment Act of 1852 which applies in terms to Seamen, not being slaves, who desert from merchant ships a "This is a distinction to which this Government can never assent nor can we ever accede to any stipulation acknowledging the right of a foreign Government to enquire into or determine the status of seamen on board of our own vessels. The civil condition of such persons being determined solely by our own laws" Mr Cass Secretary of State to Mr Dallas at London 8th October 1860 MS Department of State.

Z says - p 221 - "Under the provision in the treaty with France the United States have or have had treaties with Belgium and many other Nations - (specifying them) - respectively authorizing the arrest in their respective ports of any sailors who have deserted from the public or private vessels of the other of the contracting parties and stipulating for the aid of the local authorities for their apprehension. See U S Statutes at Large vol VIII. IX The gives the provisions in the treaties with many other nations, comprising jurisdiction on Consuls. There appears to be no treaty referred to in D which is not cited by Z. in one of his three notes.

For the treaty with Persia Z cites U S Statutes at Large vol XI. 710
D cites U S Laws XI 709

For the treaty with Siam Z cites U S Statutes at Large vol XI. 684
D cites U S Laws XI 683

D refers to Act of March 2nd 1829 and cites the X 360 his next preceding citation U S Laws VIII. IX. X. The Statutes is found Vol IV p 360. Z refers to consular treaties (page 221) citing Vol X - The next for a Statute of May 4. 1826 cites Statutes at Large Vol IV. 160 and for the Statutes of March 2. 1829 p 360. It is said that D does not refer the next preceding citations.

It would be remembered that Prof. Corbin (Record 351) that he examined all the treaties which he cited and had them all in his study.

only record

vii 764 149 The Author quotes an article of the convention between the United States and France providing for the Extradition of fugitives from justice, concluded 24th February 1845.

D says the supplemental convention between France and the United States of February 10 1858. Extends the duty of Extradition to principals accessories and accomplices in the following crimes. He then gives in quotation marks some lines of that convention.

L has a note of two paragraphs on the same plan - note 77 p 236

It is not claimed that D has taken anything from the first. What is claimed that D's note is in the second paragraph. L says By the convention of February 10th 1858 the provisions of the preceding conventions are extended to persons charged as principals accessories or accomplices with forging a Knowingly passing a putting in circulation" omitting the language in the Extract of D, but without quotation marks. Citing United States Statutes at Large Vol XI p 741.

It might have conjectured that L used the words of the convention. but would he have ventured to enclose them words in quotation marks without consulting further?

Treaty third

W 77 p 149 Note of half a page - "Extradition of a State of its own citizens"
Territoriality of criminal laws"
L has a note attached to the final words of the same sentence
of the text of the pages - note 78 p 236 -
Note that D says, may be found in L. But the two notes are
entirely unlike.
D has but two citations - Mohl's Staatsr Völkr und Pol 1. 644
et seq. Woolsey, Introd § 78.
Neither of these is in L.

Treaty fourth

note 78 p 190 a note of less than a page - "Later Extradition treaties".
D says "Since the Author's text and notes to his own last edition
some new Extradition treaties have been made. One between United
States and Prussia negotiated by Mr Wheaton in 1845 was rejected
by the Senate of the United States, it is supposed on the ground that it
exempted Each party from the obligation to surrender its own subjects;
but in later cases, that obligation seems to have been waived by the treaty
of June 16th 1852 between the United States and Prussia (US Statutes X
1022) provides in Article X "That neither of the Contracting parties shall
be bound to deliver up its own citizens or subjects under the stipula-
tions of the treaty"
L has a note of two pages at the same place - note 78 p 236,

The refers (p p 287 & 8) to this treaty of June 16 1852 & gives many of its provisions. The says it provides that none of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of the convention. The cites United States Statutes at Large vol X p 964. In the 8th paragraph he cites for a treaty with Brasil in The vol X p 1022.

It is claimed that in copying from L, D must have compared the citations and must have taken the page of the Brasilian treaty for the page of the Persian treaty. But it is clear that D could not have found from L, that in many articles X which contained his quotation. L does not enclose his 4 times in quotation marks and he uses the word convention where D uses the word treaty.

D 8th mentions several treaties where the question as to extradition of citizens or subjects is provided and several others where it is not. These treaties are all referred to by L either in his note or the addendum to his note p 1002.

Both L and D give 1862 as the date of the treaty with Mexico. It should be 1861 (Statutes at 1861-2, p 1160.

L in his addendum p 1002 refers to the treaty with Venezuela but gives no date or reference to the treaty except "Treaties of 1861-2 p 1162 D refers to the treaty with Venezuela 1861. The treaty was concluded August 27th 1860 and was ratified at Washington in 1861. It would seem that D did not get his date from L.

D says Great Britain has steadily refused to surrender political offenders or to deny them asylum and cites Hansard, Debates, 1853 CXXIV.
He refers to Lord Palmerston, despatch upon the demands of Austria and Russia on Turkey for the extradition of the Hungarian refugees citing Annual Register 1849 p. 342. Rüttimann Europ. Völkerr. § 63.
Phillimore International Law I 407. 432.
These citations are also in L, note, though not altogether the same as in D.
Both refer to the attempt on the part of the Emperor of the French to induce Great Britain to provide for the punishment of refugees who on English soil were plotting his assassination and the failure of that attempt. D cites no authority. L cites the Annual Register and the Annuaire.

~~twenty fifth~~
twenty fifth 191 a note of Nürnberg.
D says The United States have made no treaties for the extradition of deserters from military or naval service. Negotiations for a treaty with Great Britain to include such deserters and fugitives slaves which slavery existed in the British West Indies and Canada slaves were begun in 1826 by the United States and renewed in 1828-9 but failed from the refusal of the British Government to surrender fugitive slaves. Correspondence between Mr Clay and Mr Gallatin June 19th 1826 & September 26 1827 and Mr Clay and Mr Vaughan June 13th 1828 and Oct 2d 1828

BB and Hor State Papers 1424-30 p 1221. There is a convention between Russia and Prussia Aug 8 1457 for the mutual surrender of deserters and persons owing future Military service. Nouveau Recueil XV 105-95.

The historical facts in this note and all the citations are found in L; note 78 p 236 - 4 p 243. 244. A note of two pages.

Thirty eighth

note 82 p 193. The Author says "that it has been doubted how far it may be consistent to enter into conventions from different Sovereigns against a common Enemy." The better opinion however seems to be that although it may in fact amount to giving Aid it cannot be irregular and illegal". - - -

At the end of this section of the text D's note of nine lines. D cites Martefuelle Droits des Nat Neutr tome I liv 3 p 190. Mably Droit Comm liv II tit I No 166. Martens Eprai sur les Armements ch 2 § 14. Alcte Abrev Pieces Marit Part II ch 1 88 7. 8 Philimore I. 374.

The matter of this note may be found in L, note at the same place - note 80 p 254. He refers to the first four writers - but not to Philimore. He does not give number of Mably - No 166 - nor does he cite where in Abrev Pieces Maritimes, the views for which he cites them may be found.

Wrongly translated

note 85 p 201 D's note "The Slave Trade a Piracy" covers less than two pages.

ng 110 It is claimed that the second, third, fourth, fifth and

los 167 sixth paragraphs are taken from L, a three notes. viz note 82

p 204-45 p 258 of three pages - note 83 p 262 of two thirds of a page

and note 84 p 263 of some two pages, which last is at the

same place in the text as D's.

L p 258 says "The Treaty of Paris, by one of the separate articles

of which France engaged to unite her Efforts with Great

Britain at a future Congress, to cause all the Powers of Chris-

tendom to proclaim the abolition of the Slave Trade was signed

on the 30th of May 1814".

D says "by the treaty of Paris of 1814 the Eight Powers Engaged

to Exert themselves to accomplish the "Aim of the Slave trade". and

by a separate article Great Britain & France agreed to cooperate

in obtaining the assent of all the civilized Powers to a treaty de-

claring the abolition of the Slave trade".

L p 259 says "The only general result of these negociations was a

declaration, having date 8th of February 1815, of adherence of the

Congress to the additional article of the Treaty of Paris, between

England and France, denouncing the trade "as repugnant to the

principles of humanity and universal morality", but leaving

the period for its abolition a subject of negociation between

the several powers".

D says the declaration of February 8th 1815, between the parties to the Congress of Vienna was to the effect that they considered the Slave trade "as repugnant to the principles of humanity and Universal morality"; and the Eight powers bound themselves to take measures to secure its abolition.

I p 259 says "The treaty of September 1817 with Spain, and the operation of which was extended in 1822 and in 1835, is important (though the trade was still practically allowed till 1820), the general system of mutual search" &c

D says between Great Britain and Spain the treaty of 1835 conceded a right of search and established Mixed tribunals

I p 263 says "According to Phillimore there were in 1849 twenty four treaties in force for the suppression of the Slave trade between Great Britain and other civilized powers, including those with the United States and France, two of which Established mixed Courts, and the others (with the exception of the two conventions specially mentioned) likewise amounted a mutual right of Search, though they required the Captured vessel to be handed over to the tribunals of the Country under whose flag she had been taken - International Law Vol I p 331"

D says "in 1850 Great Britain stood a party to twenty four treaties for the suppression of the Slave trade. Of them, ten gave a right of Search and of Mixed Courts, twelve gave the right of search, with trial only before Home tribunals; (~~with~~

two (with United States and Hanse) gave neither right of search nor mixed tribunals, but provided for naval cooperation. Phillimore, International Law 1. 332-3.

Phillimore p 333 says "by reports of Committees of the House of Commons it appears that there were in 1649-50 twenty-four treaties in force, between Great Britain and foreign Christian Powers, for the suppression of the Slave trade: ten of which gave the right of Search and Mixed Courts; twelve gave the right of Search and National tribunals; and two (with the United States and Hanse) gave no right of Search, but do contain a mutual obligation to maintain squadrons on the Coast of Africa". Phillimore pp 331 & 332 gives a Catalogue of the treaties and the last mentioned is of the date of April 2nd 1850 - that with New Granada. It says "the Treaty of Washington (commonly called the Ashburton Treaty) & provisions were made for naval cooperation - the United States declining to agree to a right of Search, however limited, or to mixed tribunals".

Last gives a summary of the provisions of the Treaty between the United States and Great Britain of April 7 1862 - I in the last two paragraphs of his note and I on pp 270-271 & 272.

I [redacted] quote from letter of the Adams to Secretary Seward - Calvin I Rush to show that an admission of right to Search would result with unanimous repugnance

Despy that in 1824 a convention was signed which conceded an right of Search between certain Latitudes; but by advice of President Monroe, it was rejected, for that reason by the Senate. It does not in consequence that the convention may rejected by advice of the President.

Lucien gives in different Language the substance of the treaty between the United States and Great Britain of April 9 1862.

vol 89 p 213 entitled "Name Reed" - "Visit and Search" of less than four pages is claimed to have been taken to form Extract, from four notes of L viz note 85 p 240 at same place in the text - note 83 p 262 of half a page - note 89 p 268 of ten pages and note 81 p 257 of four pages. L in his index, under the head - Visitation and Search in time of peace refers the reader to the pages on which are the last three notes.

The proofs binding it more and more theoretical case of L. notes are - that some citations are in the same order in both - that L refers to a manuscript, for a quotation and that D cites the same with without saying where the reader may find the authority - that L has a reference to the wrong page - that D has made the same mistake - and the peculiar manner of citing Kents Commentaries.

The manner and style of note is original - in this he has not followed L. Here is evidence of study. Here are citations in common - and citations in one which do not occur in the other.

L p 262 refers to three despatches of Mr Wheaton - one of Mr Cass and a letter addressed to Mr Guizot - in the nature of a protest against the Ashburton Treaty. What he says are understood to have had no little influence in preventing the ratification of that treaty.

The three quotes from a letter of Mr Legaré Secretary of State to Mr Wheaton - citing State Department MS. on page 265 he refers to Mr Stevenson as having maintained a like position.

He does not indicate where the quotations can be found. Apart from the Legaré letter, he does not say where the Spirit of the Webster or the Spirit of the Times can be found.

D says Mr Webster, Mr Clay, Mr Legaré, the Stipulations and Mr Everett have timely discussed this subject, in their official action and have agreed in the reasoning that no nation can exercise police jurisdiction over private vessels of other nations on the high seas. He does not say where this discussion can be found.

D in the third paragraph of his note says the British Government in former times have claimed and exercised a right to search vessels suspected of being slavers. . . . Lord Palmerston in reply to Mr Stevenson Aug 27th 1841 avowed the intention of Great-Britain to stop vessels of any nation on suspicion of being engaged in the slave trade and limiting the examination to the ascertaining of the National character the vessel may assume and abstaining otherwise from "molesting and detaining" &c. It was omitted by Mr Stevenson in his reply. Lord Aberdeen's rejoinder of Oct 16th 1841 adhered to the claim of right, pronouncing only safeguards against its abuses.

In p. 265 quoting from the correspondence gives the reader the same information, more in detail. Nothing tells where the correspondence is to be found.

Lord says that discussion arose between the United States and Great Britain touching the boarding & searching of certain American vessels

as L says, in the gulf of Mexico, as D says off Cuba. Each states the result of the discussion and Each quotes from Hansard, in the House of Lords. L cites Lawrence On Visitation and Search and D cites Annual Register 1858 pp 145–149. 191–196.

D the present to say that in 1859 there was a further debate in the House of Lords - on the construction of the Convention with the ship Regina and which seems to be founded. This has not been found in L.

D adds that what has been said by an officer of the ship of his companions never relieves themselves have taken the matter in hand and settled it. "It is of historical interest however to record the Hamburger (Droits des Nat. Neutre Tome III p 471–487) Ortolan (Droit Commun I 291 f. Ortolan (Regle Internat. I. 242. 258–262) de Cussy (Droit Maritime II 385) agree with the Hamburger that neither visit nor search can be exercised in time of peace; and seems to be the opinion of Riquelme (I. 236)

Neither Europe Wheaton § 168 and de Pistoye et Duverdy Traité des Prises Tit I ch 3. sec 2. No time cites the opinion of Dr. Lushington in the Hebburn [illegible] March 22 1854, in the case of the Carpenter.

L p p 257. 258 quotes as to the Hamburger Ordonnance. Droit des Nations maritimes Tit X I ch 1 § 2. Tome III p 471–487. - Ortolan § 3 Tome III p 3, 2me edition; Pistoye, Duverdy Droit Commercial Tit II, Tit I ch 2 sect 2 § 8 Tome I p 291. Ortolan, Ortolan Diplomatie de la Mer. Tome I p 258–262 2me ed. and Cussy, de Cussy Droit Maritime Tome II p 385.

L also p 273 quotes Riquelme (Tome I p. 236); this opinion of the time [illegible] of impressment abandoned [illegible] of England.

Brotier marks the same mistake in citing page 236. He should have
been page 232.

I gather from the opinion of Dr Trigg. He says that a new work
& might well have title the authority of Montesquieu. ~~Notes~~ Magni
Ortolan De Cuffey Regulation and Trigg, as sustaining his proposition
without seeing more of them might be found or might have
found quoted by L.

You may see proof that the letter of August to Wheaton was not in print
when D made his note - or that he did not the authority he has cited
have what appears above.

Serjeant Stephen
Vol 96 p 231 . The Editor says "The authority of Parliament is alone competent to dissolve the marriage so as to enable either party during the life time of the other again to contract lawful wedlock".
This may come when the Lex loci may matter. It may not be the case in 1463. At this point I positively put his note of four lines.
"Since the Act of 20 & 21 Vict c 85 which went into operation 1st of January 1858 the Court for Divorce and Matrimonial Causes" is authorised for the causes specified in the act to grant a total divorce or dissolution of marriage. Stephens Blackstone, Commentaries on the laws of England Vol II pp 250 246."
But, note 96 at the same place is My Act 20 & 21 Vict c 85. divorce a vinculo may now be granted in England by a Court Established for the purpose.
It is incredible that the round assertion should ever have been known that was such an Act of Parliament and it is more easy to believe that having the year and chapter before his Eyes, he should have thought it worth the trouble of going to an other book to verify it. He may have looked at Stephens, postdated volume or at Wilson on "Marriage and Divorce"
But this is hardly probable.

Thucydides

Cf 99 p 287

This note is at the end of one of D's sections, with the heading "Titles of sovereign princes and states". It is of this thing. He says "the great Powers regard the assumption of regal titles as more than matter of Etiquette and as involving important relations and entailing serious consequences. They therefore make grave points of the recognition of such titles" L has a note of a page appended to the last words of the sentence preceding paragraph.

It is true D might have written his note on the information derived from the reading of L's note - and it is as true that he might have written it, having read nothing more than the title. It is a matter of common as bearing to every reader of History.

There is no indication that D took his note from L',

Mutz first-
Lodi 104/p255. ci' of about half a page

At the same place, L has a note, note 101, p 314 of about the same length - in which he refers to an Act passed Aug 18th 1856 to authorize protection to be given to citizens of the United States who may discover deposits of guano - gives the substance of some of its provisions - but marking no quotations - citing 25 States at Large Vol XI p 119
He adds "the conflicting claims of the Venezuelian Government to the Aves Islands, discovered ~~planned~~ by American citizens in 1854 and occupied by them for the purpose of taking guano, but from which they were expelled by the authority of Venezuela were after being the subject of diplomatic discussion, settled by payment by Venezuela to the United States Government of a stipulated indemnity for the private claimants. citing 34th Cong 3d Sess, Senate Ex Doc No 25. 36 Cong 2d Sess No 10.
He says - "the law for the occupation under this Act of Navassa, the title to which was claimed by Hayti, 36 Cong 1 Sess Senate Ex Doc No 3;
D says "in 1856 the United States adopted a general system respecting the discovery and use of guano Islands set forth in the Act of Congress of 18 Aug 1856 - quoting from the Act - and says it thereby provides that citizens of the United States discovering and taking peaceable possession shall be protected and requires them to use a certain the guano to citizens of the United States only and at reasonable prices of which is not found in L; note -

I could not have taken this note from L

D adds "Eng" under this act the United States had questions with Venezuela as to Aves Rock and with Nicaragua as to Mosquito, Islands lying off the coasts of those countries respectively. The former was settled by a payment of an indemnity by Venezuela. citing H. Doc No 25. 34 Cong 2d Sess. No 37. 36 Cong. 1st Sess.

Whether this shows when the questions with Nicaragua was settled. or whether it was ever settled at all

ing Treaties
09 p. 261 . of four lines. in which D carelessly substitutes to his note 142 p. 350 of a page.
D has a note 110 p. 262. of fourteen lines.

At the same place with D; note 110 L has a note 10th of three pages p. 325
He is claimed that the facts and observations in D's note 109 and 110
except one relating to 1865 are found in L; note, and that the substance of
D, note 142. so far as prior to L is found in the same chapter & pages
which is referred to in L's note, chapt

In note 109 D says "it was claimed by the mixed Commissioners between the
United States and Great Britain under the Convention of 1853 that the Bay
of Fundy was not a British bay, from which United States fishermen were
excluded by the Convention of 1818 not an open and Common Sea - See
note infra on "The Northeast Fisheries". Norton is said of a decision of
a mixed Commission in L, who says that the Umpire declared that the
Bay of Fundy is not a British bay, nor a bay within the meaning of the
words as used in the treaties of 1783 and 1818. "Report of Commission p. 146."
It would seem that D did not get his note 109 from L, note 104.

D in note 110 gives in his own language some of the provisions of the treaty
of June 5 1854 and one quotation thereon. L in note 108 prints the
first and second articles of this treaty. D might have written his note
without any more of the treaty than is printed by L. See also U S Laws X. 1093
L also United States Statutes at Large Vol X p. 1089
D adds "But this treaty in accordance with a provision for the purpose
was terminated after the giving of a notice given by the President, in pursuance

of a construction of Congress of January 14th 1868. U.S. Laws XIII, 566

On coming to D, note 142 it will be found that I have not been
obtained his information from L, note 108. He says "the supposed treaty of 1854
gave a new adjustment to the subject of the North Eastern fisheries - and
states in what respect. Says the American fishing schooner Washington
was seized while fishing in the Bay of Chaleurs, two miles from the
shore, taken to a British port and adjudged for forfeit - states the
grounds of the adjudication - that a claim was presented by the owners
of the schooner for compensation to the mixed commission - that
the commissioners differing, the former states the Umpire, decided
in favour of the owners - and states the reasons of his decision -
citing the schooner Washington. Report of the Commissioners under
the Convention 1863 p. 6 p. 170-186.

L says the decision under the convention of 1853 was in favour of the
American Contention. The Umpire in awarding compensation for a
vessel employed in fishing in the Bay of Chaleurs which had been
captured in 1843 and condemned in a British Vice Admiralty Court
decided that the Bay of Chaleurs is not so - citing report of Commission 1866
p. 9 contains - that D did not have from L, note, the names of the schooner
- that she was seized while two miles from shore - the grounds of the
Vice admiralty adjudication - the part that the Commissioners were
respectively chosen - the name of the Umpire, or his reasons
for his decision.

Black Sea

ity Hunt
ote 1111. 264

i of some eighteen lines. at end of section ii the sig. "The Black Sea, the Bosphorus & Dardanelles"

L has a note of nearly two pages on the same page. note 104 p. 330 and a note eight lines. note 107 to 329.

D says "the Treaty of Paris of 1856 ... contains the principle of the convention of 1841. with some changes; and gives in his own language the substance & some of its provisions.

L prints textual extracts of the Treaty of Paris. extracts articles of the convention between the same parties of the same date and two articles of the convention between the Emperor of Russia & the Sultan signed the same day.

From this, D might have derived the first paragraph of his note. or he might have seen some other copy of the treaty.

In the second paragraph D says "the treaty of 25th February 1862 between the United States and Turkey, the United States are placed on a settled conventional. on the footing of the most favored nations with regard to passing the Dardanelles and Bosphorus and to trading in the Black Sea. See S Laws XIII, 271.

L pp 329 gives the substance of the 7th article of the treaty between the United States and the Ottoman Porte, of 1830 and adds "This treaty has been recently affirmed by a convention made at Constantinople 22d of February 1862. citing U.S. Statutes at Large vol XII, 440 VIII, 404

The date of this treaty is 25th February - not the 22d

L does not say where the Statutes of 1862 is to be found - D does

ninty fourth
the 112 p. 266 ci of half a page

I has a note at the same place of five pages - note 110 p 333

The first speaks of the arrangement of 1641 between Denmark and Great Britain Whereby the tariff of duties levied on the passage of the Sound and belts was revised.

2 says The subject of the Sound dues was part and parcel of the treaty of 1857 to which the five powers - the powers on the Baltic and North Sea - were parties - states the terms of the agreement, says the United States declined to take part in the convention and why and that the United States made a separate treaty with Denmark 11 April 1857 and gives the terms. citing. Annual Register 1857. p 12-40 - 1858 p 430 Martens XVI 331-345. U S Laws XI. 714.

In the second paragraph "For a history of the negotiations of this subject" between 1830 and 1857 he refers to Wheaton, History of the Law of Nations 1845. Webster, Works VI 406 - & Doc 104. 1st Sess 33d Cong Message of President Pierce December 1854.

In the second paragraph of his note 3 says "by the treaty of Hanover of 1861 the tolls laid by Hanover on vessels navigating the Elbe were abolished as against the parties to the treaty, by a capitalization on the principle of a fifteen years and a half purchase; citing no authority. He adds "the United States made a treaty with Hanover of 6th Nov 1861 by which these tolls were abolished as to American vessels for the sum of 63,353 thalers - citing U S Laws XII 253 &

L gives the substance of official dispatches - citing Droit des Gens
of Wheaton Leipsig Edition 1846 tome 1 p 211 - Wheaton, Works vol VI p 406
U S Statutes at Large vol IX p 558. Cong Doc H of Rep 33d Cong 1 Sess p Doc
104 - President, Message December 1854 - States the terms of the treaty of
March 14 1857, citing Annual Register 1855 p 291. Almanach
de Gotha. 1856 p 54. Ib 1857 p p 12. 16. 23. 40. Ib 1858 p p 30
Martens par Samwer, Nouveau Recueil XVI part II p p 331. 345 -
next the terms of the Convention between United States & Denmark,
generally from Hautefeuille touching the right of Denmark to levy the
tolls - states how the tolls on vessels navigating the Elbe were abol-
ished by compromise. citing Annuaire des deux mondes 1860 p 443 -
next gives the terms of the treaty between United States and Hannover by
which the United States forgoing 63.353, were released from further
payment of tolls. In connection with the Sound dues and the tolls
levied at Stade L calls attention to the great inequality which exists
with regard to vessels lights under the different systems adopted
in the United States & Great Britain, devoting a page to the subject.

A large part of D's note might have been written without further information than is furnished by L's.

Next Bold says the Treaty of 1857 avoids a recognition of a right in Den-
mark to levy dues on passing vessels and Denmark agrees to levy no
further duties without admitting that the charges then theretofore
had been objectionable

He says "the United States declined to take part in the conversation in the ground that it might involve questions of purely European policy - and because the invitation from Denmark seemed to assume her right to levy the dueties and to receive compensation for abolishing them". The Master nothing of this in L, note. D must have read more than this note.

It may prove that the Annual Register - for 1858 pp 12-40 cited by D contains nothing pertinent to the subject - and it is suggested that in copying L's citations he omitted to refer to Almanach de Gotha 1856 p 54 - the 1857 p/c 12.16.23.40. ~~Harrisburg~~ which precede. the 1858. p 430. There are not 430 pages in the Register for 1858. The citation is undoubtedly erroneous.

The note of D requires study - and study outside of L, note.

ning fight
Ist 117 p 277 4 of 6 lines. D says "The treaty of Paris of 1856 applies the declaration of the freedom of rivers running between or through several States, by the Congress of Vienna, to the Danube, and opens it to the trade of all nations, with no duties founded solely on the right to navigate. It makes special provisions respecting police, quarantine and Customs duties, and the removal of physical obstructions to Navigation. See also Art 17 of treaty of 1857. Martin, Nouveau Recueil XV 647. 776; XVII. 75. 622. 632

2 has a note on the same plan of more than a page - Note 113 p 349. He says "the free navigation of the Danube, had been one of the four points made the basis of the negotiations at the Congress of Paris". "The principles of the Vienna treaties were applied to it as follows: The following which purports to be articles XV. XVI. XVII and XVIII of the Treaty of Paris. citing Martens par Samwer Nouveau Recueil tome XV p p 647. 776". "The act of navigation of the Danube was concluded between Austria Bavaria the Ottoman Porte and Wurtemberg in pursuance of the 17th article of the treaty on the 7th of November 1857. It recognizes the freedom of navigation for vessels of all nations, which are to be treated in every respect on a footing of perfect Equality. Its term XVI part II p 75 The European Commission Established under the date of June 27 and July 26 1860, provisional regulations of Police

for the lower Danube and a tariff of tolls at the mouths of the Sulina, without however terminating its labours: Ch. pp 622.
632". It is apparent that D might have written his note without reading more than L's.

The 17th Article of the Treaty of Paris provides for a commission to be composed of delegates of Austria, Wurtemburg, the Hellenic Porte and Wurtemburg - (one of each of these Powers), to which shall be added commissions from the three Danubian principalities whose nomination shall be approved by the Porte,
1 to prepare regulations of navigation and river police.
2 to remove the impediments of whatever nature, which shall still prevent the application to the Danube of the arrangements of the treaty of Vienna
3 to order and cause to be executed the necessary works to complete the whole course of the river.
4 and after the dissolution of the European Commission, to cause to maintaining the mouths of the Danube and the neighbouring part of the Sea in a navigable state.

D cites article 17 of the treaty of 1857. There was no treaty of 1857. The act of the navigation of the Danube was concluded in pursuance of the 17th article [redacted] 7th Nov 1857.

The citation of Martens Nouveau Recueil XVII. 755. 622. 632

is a mistake, for these solutions have no relation to the matter for which they were cited by D.

This has the appearance of a hasty transposition of solutions from 2. note.

Treaty Series
Vol. 118 p. 287

is of a page & a quarter - at the end of a section of the Treaty which treats of the claim of the United States to a free "Navigation of the Rivers of Articles IV & the succeeding treaty p. 5 "from 1854 and term of the St Lawrence". It is a succinct statement of the terms of several treaties, securing the free navigation of Rivers - between the United States and certain of the American States and between the United States and Mexico. The writer says "By a law passed on the 26th November 1853 Ecuador declares free the rivers and tributaries within the republic including the Ecuadorian tributaries of the Amazon".

The last paragraph but one of D; note is devoted to the controversy between the United States and Peru as to the Peruvian tributaries of the Amazon. "By the treaty between those powers of 26th July 1851 he says "it is agreed that there shall be reciprocal liberty of Commerce and navigation between their respective territories" and that the citizens of either may frequent with their vessels all the Coasts ports and places of the other where foreign Commerce is permitted, and shall have full liberty to trade in all parts of the territories of either, and Each agrees not to grant any favor, privilege or immunity whatever, in Matter of Commerce and Navigation to other nations which shall not be immediately extended to the citizens of the other contracting party On the 23rd October following Peru made a treaty with Brazil to regulate the navigation of the Amazon and its tributaries, in

which it is agreed that boats of either country passing to or from portions of the other on that river or its tributaries shall be subject only to inspection duties, such as either nation lays on its own vessels. The United States claimed that this treaty came within the operation of the reciprocal clause of the treaty 20 July 1851 --- This Construction has been denied by Peru, in which denial she has been sustained by Brazil. --- U S Laws X 28 C"

I has article 18 of the reciprocity treaty, and has given the substance of the several treaties mentioned by D, to which the United States was a party.

For these treaties I refers to the volumes of the United States Statutes at Large, which I refers to U S Laws X C by which he means as he explains a bound volume of treaties which he owns.

D has explained that on the meeting relating to United States treaties, he committed them to memory carefully, and undertakes to be exact. He has made several quotations from the treaty between the United States & Peru of 26 July 1851, which are not found in L, note.

I also gives the substance of the laws of Ecuador of 26 Nov 1853 citing Annuaire des deux mondes 1860 p 905

D makes no reference to the source of his information

L, for what he says of the treaty between Brazil and Peru, refers to Annuaire des deux mondes - appendix p 434

D for what he says of this treaty, refers to no authority.

L, note containing many things not touched by D.

Strictly Construe

note 122 p 295 is a note of fourteen lines.

L has a note of Eleven lines - note 120 p 384

a note of half a page - note 121 p 385 at same place as D,

and a note of ten lines - note 122 p 386

The note of D was written on an interleaf. It might have been written including the alterations, from the three notes of L. It does not indicate when the letters he mentions are to be found - nor does L in all instances -

Envoy Extraordinary

123 p 297 is of nine lines.

L at same place has a note of nearly a page - note 125 p 388

D says "it is understood that a minister of foreign affairs may decline to hear a despatch or other written communication, made to him by a diplomatic agent, unless a copy is left with him. The reason is that it puts him to the disadvantage of being obliged to trust to his memory while the other party to the interview has the writing. In case of verbal communications the two parties are on an equality." citing two authorities

L quotes from a letter of Mr Canning to Lord Grenville - in which he gives an account of an interview he had just had with Count Lieven, who proposed to read him a long despatch, but said he was not

authorised to give a copy.

"I said to him" - writes Mr Canning - "it was utterly impossible for me to charge my memory with the expressions of a long despatch one read over to me, or to be able to judge on one such hearing, whether it did or did not contain expressions which I ought not to pass over without remark. But if the passage were pronounced, I was responsible to the King and my colleagues and ultimately to Parliament, for the conduct of a person which might be of the most essentially important character and of which the light might be greatly lessened if third parties of hearing the meaning which I did not, on the instant attributed to it, and yet which upon bare recollection I could not controul".

It does not cite the letter of Mr Canning, for his action in a single case, would not establish a rule of universal obligation. But he appeals in the present position would the most conclusive reason for such a rule.

It is quite probable that the note of 4 suggested to D. the importance of having such a note at their fingers.

Wheaton minister
2 Kent 125 & 301 as to private liberty.

The last Heads of Exceptions to the general rule of Exemption from the Local jurisdiction of public Ministers.
D says "in the trial of Norbert for murder at Washington 1856, the Minister of the Netherlands who was an important witness to the transaction, refused to appear in Court at the request of the United States Government, who admitted his right to decline; and his own Government refused to instruct him to appear as a witness, although requested so to do by the United States. His objection was that by appearing he subjected himself to cross Examination and to the rules which justice to the respective parties might require the Court to enforce. & doc Smith No 21 34 Cong 3 Sess"
L has a note of more than a page (not at same place) note 127 & 393, in the second paragraph of which are Extracts from letters from Secretary Marcy. Mr Bates Attorney and Mr Dubois the District Minister. Wheaton 3 4 Cong 3d Sess Senate Ex Doc No 21
D gives the name of the party charged Herbert, which L does not. He speaks of it as a trial for murder - L as a case of homicide.
D says the Minister of the Netherlands refused to appear in court
L says the British Minister refused.
D gives the reasons given by the Minister for refusing to appear - L does not

ntents
126/p 301 The text says "In cases of offences by public Ministers affecting the Existence and safety of the State where they reside, if the danger is urgent, their persons and papers may be siezed, and they may be sent out of the Country"

At this place is D's note 126, of letter more than one line. It says "For instances of the Enforcement of this rule, see Lord Stanhope's Hist of England I 384. 484"

L. note 131 p 395 is at same place: in which he gives a short history of two cases. That of Gyllenborg the Swedish Minister at London who was arrested in 1717 and placed under guard on occasion of a conspiracy against George I in favor of the Pretender. quotes from Mahon's history. citing Mahon's England Vol I p.p 384-392 Lond 1836

He says in 1718 on occasion of a conspiracy instigated by Alberoni the Spanish Premier. against the Regent of France, it was determined to adopt the same conduct with Cellamare and his person was accordingly put under arrest. He Vol I p 484.

He refers also to the case of the Swedish representative at Vienna and quotes the remarks thereon of Viscount Stratford de Redcliffe citing Hansard, Parl Deb 3rd ser Vol CIV p 1249.

Lord Mahon alluded to in Letter of Lord Stanhope in 1845 5

There is no evidence that D ever read or consulted the "History"

and never that he died.

For which there appears, he consulted the London Edition of 1836

only first
ii 313 to 319 is of sixteen lines. D says "De Twiss (Laws of Nations 1. § 203) states the present rule and practice somewhat differently and then makes a quotation

L at same place has a note of twenty one lines - note 133 p 416 in which he says, the statement in the text does not accord with what we deem the correct rule or principle, nor with what was the usage in England during the Editor's official residence in that Country. . . . . The same extract from Twiss follows - except that the words "the ratio" are substituted for the word "there". The first three paragraphs are from the text of De Twiss. the last three from his note on the same page, though there is no indication of this in Lawrence.

D directed the printer to reprint this extract from L: which was done except that the words there in the quotation made by the Lawrence was changed for the words the ratio.

"there" is the word in the original.

D would be hardly have undertaken to correct the author he was citing - he must have supposed that a mistake had been made in copying, or he would not have substituted, the ratio, for there - He probably did not take the trouble to compare the quotation of L with the original.

Foreign Relations
vol 136 p 326 is of the times. The text speaks of the termination of a public mission, of the decease or abdication of the Monarch, sovereign or of the sovereign to whom he is accredited.

D says "In the United States and in other Constitutional Republics no change or interruption in the functions of diplomatic agents takes place upon the death of the Chief magistrate or the expiration of his term of office and the inauguration of his successor. He cites no authority. Ds refers to no authority

L has a note of his time, but at the same word of the text but as a word in the same paragraph - vol 145 p 430 - He says "According to the public laws of the monarchies of Europe, the authorities of ministers expire, on the death, deposition or abdication of the person, but not so as between the American republics, in which the function is permanent and continuous without regard to the governing person. - - - - In fact, while in monarchical States it is the custom to notify to friendly Governments all personal changes affecting the tenure or succession of the Chief of the State, not only deaths but births and to give new credentials to ministers on the death or other equivalent change of the Monarch on either side, no such practice obtains in regard to the functional changes in the authority of Constitutional republics. The Cushing Ops 29 1455 - Opinions of Attorneys General vol VII p 590

The note of D goes beyond the note of L. D says United States and other Constitutional republics.

Country Thinks
Ch 137 p 326 is of fourteen lines - This particular section of the text, speaks of the termination of the Mission "when the Court at which the Minister resides thinks fit to send him away without waiting for his recall".

The first and second sections of D's work is not claimed to have been taken from L. This is the third section. "It has been claimed of European Sovereigns that they cannot be expected to receive as a diplomatic agent, a former subject, naturalized in the United States and that a special agreement to receive him should precede his ~~arrival~~ arrival at their Court". It is claimed that this was taken from L, note 141. p 421. He says p 422 "a question arose in 1854 between the United States and France as to the incompetency of a Minister passing through the territories of a third power, in the case of Mr Soulé, Minister at Madrid, who was stopped at Calais in October of that year on his return to his post, from which he had been temporarily absent. He says "M Drouyn de Lhuis the French Minister of Foreign Affairs, in his letter to the American Minister in Paris, ~~refuses~~ the rule of the Law of Nations which he affirms, would have required a special agreement to have enabled him to represent, in his native land the Country of his adoption".

This falls far short of answering the question that it was been

claimed by European sovereigns that they cannot be objected to receive as a diplomatic agent, a former subject, Naturalized in the United States and that a special agreement to receive him should precede his arrival at their Courts.

D must have had other information than what is found in this letter of the French Minister of Foreign Affairs, as reported by L.

D adds, "The principal cases of foreign Ministers objected to by the United States and recalled are those of Genet - in 1793-4 (Wait's Am State Papers 1. 137. 490) - of Mr Jackson in 1809 (Ste VII 243. 295. United States Laws II. 613) of Sir John Crampton in 1856 (Mr Marcy to Mr Dallas June 16th 1856 Am Reg 1853. 277; & Ex Doc House of Rep 34th Cong No 107) And of M Poussin in 1849 (Annuaire 1849 p 665)"

L has a note at the same place of D's of about a page - note 146 p 437. In which he gives a brief history of Genet's case - citing Wait's American State Papers Vol I p 137 and the Announcement of the President to Congress that Genet's conduct had been unequivocally disapproved - for which he cites Ste p 490

He next assigns the reasons for the recall of Mr Jackson, Minister to the United States from Great Britain in 1809, for which he cites Ste Vol VII 243. 295 - Hallecks Int Law Vol 2 p 216.

He says an Exciting Correspondence took place between Mr Crampton and M Poussin Minister plenipotentiary of France - - - - and that the French Government dismissed and recalled its Minister - citing Letter Annuaire 1849 p 665

He then gives a history of Mr Crampton's case and cites Annual Register 1856 p 277. 34th Cong 1st Sess H R Ex Doc No 107. cites what Mr Marcy said to Mr Dallas. in his letter, citing Department of State Mss.

His concluding sentence of D's note might have been written from L, note 437. The citations are all in L.

Whether the letter of Mr Marcy was published before the last Edition of Wheaton is not in Evidence.

D says "the principal cases of foreign Ministers objected to by the United States and recalled" French was recalled, but that part is not found in L, note. But Crampton was not recalled. "The President determined to send him his passport and to revoke the Exequatur of the Three Consuls implicated with him" as appears by L note p 438. Had D studied L's note, he would have seen that Crampton was not a minister "objected to and recalled". He was not only dismissed but recalled. D did not get the information from L.

Wheaton
v 138 p 338 it of twelve lines. The 12th says "It is consequently an implied condition in negociating with foreign powers that the treaties concluded by the Executive Government shall be subject to ratification in the manner prescribed by the fundamental Laws of the States".

I says "For this reason the representatives of the United States are not willing to sign or receive declarations or other notes in connection with a treaty. If such can properly affect the treaty, they should be communicated to the Senate, as part of the Contract. (Mr Adams to Earl Russel Aug 23 1861. on the declaration proposed to be attached to the Convention on the subject of the declarations of Paris. MS Dipl Cor 1861 p 136 See also Mr Cass to Mr Lamprey Oct 22 1859. Sen Ex Doc 36th Cong 2d Sess No 10 President Polk, message of July 4th 1848 Cong Globe 1848 p 1861 This subject was discussed in connection with the Clayton Bulwer treaty, when the British Minister in Exchanging ratifications sent a note of explanation to the Clayton to which the latter replied. Sen Ex Doc No 12, 32 Cong 2d Sess Also Mr Wheaton's letter to the State Department of 8th July 1840 respecting the treaty with Hanover.

I has a note of a page and a half - note 153 p 454.

and another note at the same place as D's of thirteen lines. note 154 p 456.

In the latter I says "it is not necessary to submit to the

Senate for its formal approval, conventions providing for the adjustment of private claims ought not a course is indicated in the Constitution itself:" citing, 36 Cong 2d Sess, Senate Ex Doc No 10 p 472; Mr Cass to Mr Bancroft Octo 12th 1859

In note 153 I say "On the occasion of the treaty concluded with Nicaragua by Mr Webster, it was proposed to declare by a protocol that the treaty being concluded in French and English, in case of disagreement, the French should be deemed the Original. On my learning the opinion of Mr Webster in which the Secretary of State concurred, that no such declaration could be entered into, without submitting the treaty anew to the Senate. citing Mr Webster to Secretary of State 8th July 1840. Department of State Manuscripts.

He says On the exchange of the ratifications of the treaty of peace between the United States and Mexico, a protocol of the conference between the Commissioners embodying their opinion as to the operation of certain amendments of the Senate to the original treaty was signed at Queretaro on the 20th 1848 . . . . The President did not send the Memorandum or protocol called a protocol when he communicated to Congress the treaty or on the 6th July 1848 because it was not regarded as in any way material, and had the protocol varied the treaty as amended by the Senate, it would have had no binding Effect. citing Congressional Globe 1848-9 p 446

In the next two paragraphs, he says in proceeding to Exchange of the Ratifications of the Convention signed at Washington on the 19th April 1850 Her Majesty's Minister says he has received Her Majesty's instructions to declare that Her Majesty does not understand the Engagements of that Convention to apply to Her Majesty's Settlement at Honduras or to its dependencies. Her Majesty's ratification of the said Convention is Exchanged under the Explicit declaration above mentioned. It appears from the printed documents that Mr Clayton filed on 5th of July 1850 a memorandum saying he had received the above declaration on the day of its date. That he made in reply on the 4th July a note acknowledging he had understood that British Honduras was not included in the treaty of the 19th of April, but at the same time declining to affirm or deny the British title and that after signing the note of 4th July, which he delivered to Sir Henry Bulwer, they immediately proceeded to Exchange the ratifications of the treaty. Citing Cong Doc 32d Cong 2d Sess. Senate Ex Doc No 12 Jany 4th 1853. In the next and last paragraph he quotes from a letter from Mr C. F. Adams to Earl Russell Aug 23d 1861 in which he gives his reasons for declining to attack a declaration to postpone consideration of Maritime Laws, citing Papers relating to foreign affairs accompanying the President's Message 1861 p 123.

~~It appears that Mr Buchanan had~~ [illegible]

It is manifest from examination of D; note 36 "On the Monroe Doctrine p 97 and his note 215 on the Neutrality and Foreign Enlistment Acts p 536 that he had made himself familiar with the Clayton & Bulwer treaty and with the history of its negotiation.

For the correspondence between Mr C F Adams and Earl Russell I refer to the S Dipl Correspondence i 1861 & 126 which I refer to the papers accompanying his Pendant, Newspaper.

For the letter of Mr Webster & Secretary of State 8 July 1840 I cite Department of State Mss

I deny note may where this letter may be found.

L - on reverse p 125 says he has never seen the letter of Mr Webster & Secretary of State in print - and it is not found on the other side that it has been printed.

sixty fifth
the 139 f 339 is of much a page. he begins with fourteen citations in support of the positions in the text. these following contain considerations highly material.

L has a note on the same head, of two pages - note 15 f 45 v in which are cited all the authorities found in D; note with three exceptions - Wallace Pickering and Kent - L has citations which are not found in D. those which are in both notes are also in Wallace viz Wolcott's Life of Pickering 4 f 514-449 and Annual Register 1834 f 361. these are found in Wallace pages 192. 193.

L cites U S Laws 3 f 4. D has the same. it should have been 2 f 5. both refer to the letter of the Secretary to the Attorney General - neither tells where it is to be found.

D says "if a treaty or subordinate authority is necessary to give effect to any part of a treaty, that should appear in the treaty itself." this proposition does not appear in L.

D says "In the United States it is settled that Congress is under an obligation to execute all treaties. A repeal of Congress which the municipal legislature only, is a violation of the treaty and may be so regarded by the other party. this was relied on in Washington's administration in the case of the note of the appropriations required by the treaty of 1794. L says this subject came under the consideration of the House of Representatives in 1796 on the bill making appropriations to carry into effect the treaty of 1794 with Great Britain.

When President Washington sent a message to the House denying their right to call for the papers connected with the negociation, and the act must pass notwithstanding such refusal by a majority of two votes.

D; note cannot be said to have been taken from L. It carries thought and study. It may be true & copied L citations, though he made the authorities to which he may refer from L;

ority by the
ti/45/p 356 It is said in the text that "the State stipulates to furnish
to another a limited succor of troops, ships of war money
or provisions, without any previous knowledge to an eventual
Engagement in general hostilities, such a treaty does not
incorporate under the party furnishing this limited suc-
cor, the Enemy of the opposite belligerent. It only be-
comes such, so far as respects the Auxiliary forces thus supp-
plied; in all other respects it remains neutral. Such for
instance have long been the ancient relations of the
Confederated Cantons of Switzerland with the other
European powers."
Here it has this note of thirteen lines - and I a note of near
half a page - note 163 p 440.
The first sentence of it, note an pertinent and independent
of it, note - Whether this doctrine be right or wrong.
The fourteen page the Swiss Confederation until the year
of 1859 that the Swiss troops in foreign service was not
constitutionally permitted of the Confederation, as a national
Act, but only volunteer organizations of Swiss Citizens, hav-
ing no more than a permission from the Swiss Gov-
ernment to Enter into foreign service. This permission
has since been withdrawn and Swiss citizens cannot now
Enter foreign service without having permission of the Canton of

the Helvetic Union. Annuaire des deux Mondes 1858-59 p. 162. 299
Almanach de Gotha 1867 p. 8.
I says "The the 11th article of the first chapter of the Federal Constitution for the Swiss confederation of the 12th of September 1848 forbids the conclusion of military capitulations.
He says there was much excitement in 1859, during the war of Italy on account of the applications of Swiss regiments which continued to be given to the foreign troops that served at Rome & Naples and intercessions were vehement, especially after the massacres of Perugia, against a Republican government that sold its people the blood of its citizens. This occasioned a protest from the Federal Council against the denunciation of Swiss officers from the Piedmontese government, to their troops. The capitulations when they existed only permitted the voluntary enrolment of men not within the requirements of the Federal Army - that is to say who were less than twenty and more than thirty years old. - - -
- - - On the 30th July 1859, a proclamation of the Federal Council of the federal law forbidding Swiss citizens to take military service abroad without the authorization of the Council was issued. Annuaire des deux Mondes 1858-59 p. p. 162. 299.
Almanach de Gotha 1861 p. (8).
The authorities cited by both writers support me in favour the doctrine of the text. But they are appropriate, as they

show that the commercial relations of the Confederated Cantons of Switzerland with the other European powers, are Longer Yet.

All that can be said is that D might have written the Last seven lines of his note from L. and that he cites the same authorities. The manner and substance of the two are very different

5 Wheaton
Int 160 p 417 is of back a page. In the first paragraph D says "In the civil war in the United States property was condemned on the ground of domicile only. It was decided first that a place was in the state of insurrection and under the control of the rebel Enemies, it was for the time and in the technical sense of the Prize Courts, Enemies territory; second that the property of a person domiciled in that place at the time of capture was liable to condemnation as Enemies' property in the sense of the Prize Courts and lastly that although the owner was a citizen of the United States and had always resided in that place, which was held to be of right a part of the United States, and of right a proper place to reside to constitute citizenship of the United States, yet the property of such a person was to be condemned, without requiring whether he was or was not in his intention or acts loyal or disloyal. No offer was made, in these cases, to prove an attempt to change domicile and remove beyond the reach of the Enemies' control, before the capture. In short, the rule of international law as to the domicile in the Enemies' Country was applied to citizens in the civil war. The Prize cases, Black 2; Rep 11 635; Amy Warwick, Sprague, decisions 11 and Law Reporter XXIV 335. 494.

In his second paragraph, he says that in a civil war actual and firm possession and not the rights or merits of the parties to the war, determines the character of the place for the time being, so far as the Commercial relations of Neutrals are concerned, any

also asserted by the United States in its diplomatic relations with Peru. Opinion of Attorney General Black May 15 1858; the Cass to Mr Clay Nov 26 1858. Senate Ex Doc No 69, 35 Cong.

I has a note of two pages far removed from the place where D has put his note - note 140 p 574.

The first paragraph of D's note is entirely independent of L, but it is contended that his second paragraph was substantially taken from L;.

L states the position taken by the United States in a controversy with Peru growing out of the capture of two American ships for taking guano under the authority of a revolutionary government in temporary possession of some of the seaports and guano deposits and in contravention of the laws of Peru. The quotes from the opinion of Attorney General Black. "When the people of a republic are divided into two hostile parties who take up arms and oppose one another by military force, this is civil war. Supposing however that the rebellion is but partially successful and the old government maintains itself in one part of its territory whilst it is obliged to surrender another, shall it then give laws where it has no power to enforce obedience, or shall its authority be confined to the territory which it occupies? Is a revolutionary party, like a foreign

belligerent power is supreme over the Country in conquest
as far and as long as its arms can carry and maintain it."
For this I cite Opinion of Mr Black Attorney General May 15th
18 58 See Cong Doc 35th Cong 1st Sess. Senate Ex Doc No 6 p. 24. 29
He quotes from Letter of Mr Cass to Mr Clay. "I am clearly of Opinion
that an American Citizen who goes to Peru, may lawfully
act on the Evidence of his own senses. He may see that
the Government de facto will compel his obedience. If he
resists the authority of the party in possession, on the ground
that another has the right of possession, he departs from
his neutrality and so violates the duties he owes to both the
belligerents, as well as to the Laws of his own Country."
He cites Mr Cass to Mr Clay Minister to Peru Nov 2 6th
1858 MS.

I might have felt inclined to cite more authority if I were
to write the final Manuscript of his own. He has the merit
of being at once full and high.

It may be Conclusion that I quoted from Manuscript the
Letter of Mr Cass and the Reason why that is the best as
his Knowledge the Letter was never in print. ~~Timothy~~ Elsworth
Timothy Editor of Wheaton. No attempt was made to
know that it had been.

Treaty Eighth

the 173 p 453 is of three pages, on "Privateering". It is a statement of the
Efforts made from time to time to abolish privateering by
by Stipulations - of the reasons appointed for the success or failure
of these attempts, with pertinent Comments.
L has a note at the same place of twenty pages - Elaborate & full
note 192 p 628.
The citations in D are in L, so far as both cover the same
time. This was hardly to be avoided, as L had gone be-
fore him.
The Plan of D's note bears no resemblance to the plan of L's.
There is Evidence of Research and Study on the part of D. And
while much of the information in D's note is found in L's.
There is Evidence that D did not derive it all from L.
D says - p 453. The first unequivocal Effort to make us
privateering by a permanent treaty Stipulation, was that of
Dr Franklin, in the Celebrated twenty third article in
the treaty with Prussia in 1785.
L says - p 629 - it is sometimes supposed that Dr Franklin
and the King of Prussia were anticipated in this plan.
Official views of a convention made as Early as 1675
between Sweden and the United Provinces.
D says - p 353 - In the war between France and Spain in 1623
the two belligerents set out with declaring against

the Commencement of Privateers and the capture of Private property at sea; but it is supposed that the declarations, as to each on the latter point, were not strictly adhered to."

2 vols - p 630. "France in the last war against Spain, declared that she would grant no commission to Privateers, and that neither the Commerce of Spain herself, nor of Neutral Nations, should be molested by the Naval force of France & expt in the case of Breach of a Lawful Blockade".

2 vols - p 454. "That three Powers - England and France - were refused to the point that the Laws of the Neutral States prohibit any citizen, under criminal penalties, from taking a commission or entering against citizens or property of a nation with which we were at peace"

I do not find this or authority for this statement in L.

ly Mirr Ro
Ca 179. p 471

is of some time. D says "Phillimore III B 412 gives in detail the Spanish ordinances pursuing some praising rest-noticed in the light. He considers Spanish laws to place recaptures from pirates on the same ground as recaptures from Enemies". The time in his second and last sentence, says "The treaty between England and Spain of February 3d 1814 provides for a salvage of one Eighth to a public Ship and one Eighth to a privateer and seems to require restoration in all cases without reference to Lapse of time, but not of vessels which the Enemy has set forth as vessels of war". Has a note of this time, but end of sentence pending together, note 144 to 662 in which he says There is a Spanish treaty on the subject of recaptures between England and Spain Concluded 5th February 1814, which fixes the salvage at one Eighth, when the recapture is made of a Ship of war, and one Eighth of a privateer or jointly of a privateer and Ship of war. The restoration is to be made in all cases, except where the vessel has been set forth as a Ship of war by the Enemy, in which case it shall be adjudged Lawful prize to the Captors. The treaty makes no reference to the time that the Ship has remained in the Captor, and a question if they have brought into the port of the Captor a been condemned". Citing Vanderfeville 2 Martens

The substance of D's first two sentences is not found in L's note, but is found in Phillimore III 8 412.

L in his note cites Phillimore vol III p 513. Section 412 is on page 513.

D says, the treaty between England & Spain of 3rd July 1814 - and so does Wheaton p 381. L says the Spanish treaty concluded 5th February 1814.

L says. The treaty gives the salvage of one eighth when the recapture is made by a ship of war, and one sixth by a privateer or jointly by a privateer and ship of war. D does not allude to a joint recapture nor does Wheaton. L says "The restriction is to be made in all cases except where the retaken vessel has been set forth by a ship of war of the Enemy. Wheaton says nothing of this. p 381.

D appends no citation to the end of his note.

Phillimore
v 1854 p 478 of principles. "In the Crimean war, 1854, by a convention between the Allies, the adjudication, in case of joint Captures, lay with the Country of the superior officer: but this was only as between the Allies. Neutrals could not object to a condemnation made otherwise, if sanctioned by the laws of Nations; nor on the other hand, would a neutral be bound by it, if it were not so sanctioned": citing no authority

L has a note at same place of six lines - note 202 p 670 -

"By the convention of May 10th 1854 between England and France, regulating joint Captures during the war with Russia, the adjudication belonged to the Country of the superior officer, and when a Cruiser only intimidated by its presence, the jurisdiction belonged to the Country of the actual captor. In case of the Capture of a merchant Ship of either Country, the adjudication belonged to the Country of the actual captor. Horsley, Rights of Belligerents p 75 app 102"

~~The~~ This note would seem to be evidence. It could not have been written from L's.

illy forth
i 201 p 510 is of these kinds. Mr Wheaton having said that the Swiss Cantons
have observed a perpetual neutrality, adds, "But this neutrality
was qualified by the special compact existing ~~between the~~
~~Swiss compact~~ between the Confederation & the separate
Cantons and foreign States; forming treaties of alliance or capitu-
lations for the Enlistment of Swiss troops in the service of
those States."

D; note says "These Capitulations for the Enlistment of such Troops in
foreign Countries as were not subject to Military Service at home
have been withdrawn. Annuaire des deux Mondes 1854-5 p 162. 249
See note 145 ante" (which is found on page 356)

I; a note of one kind at the same place - note 211 p 704, is
"These Capitulations no longer exist. See Part III. Ch 2. § 14. Edition,
note 163 p 460 supra." In this note 163 I have cited Annuaire
des deux Mondes 1854-5 p 162.29. Almanach de Gotha 1861 p 81

Softly Sounds
ii 202 p 514 is two thirds of a page. Entitled "Neutrality of Switzerland and Savoy"

It is a historical note. To which are appended several citations. The last is Le Nord 15 February 1861.

L's note of three pages is at the same place - Note 212 p 204

It has interspersed, all the citations in D, note - the last of which is "Le Nord 15 Février 1861"

The facts asserted in D', note are all found in L;.

One of the 4 points which he finds Le Nord cites is not treated both L, & D,. (Morgan p 442) and he is cited by D only where he had been cited by L.

L does not give the page nor does D.

D has evidently condensed -

fifty-third

in 220 p 541 is of seventeen lines. The two first sentences of D's note are. Not only are the two maxims - free ships, free goods and hostile ships hostile goods - separable, but they have no logical connection with Each other. The rule that condemns Enemies' goods in a Neutral vessel, releasing the vessel and condemns an Enemy's ship releasing its neutral cargo, is as Hefftr says (Europ Volkr § 162) an application of the maxim, summum cuique.

It is claimed that this part of D's note is from L. note of nine lines at the same place - note 224 p 740: which is "Gardin says, as to the two cases of Enemy's property in the ship of a friend and of friend's property in the ship of an Enemy " In the first case, the friendly flag protects the Enemy's property, because it prohibits to examine the Entering of the Vessel, and consequently its visitation; in the second the flag does not change the nature of the property. Traité de Diplomatie tome II p 365"

There would seem to be no coincidence between the notes And D could not have taken his from L.

ity Journ
L 223 p 606 is of six pages. L has a note of twelve pages as same place
note 228 p 766 - a note of four pages - note 232 p 813 and
a note of one page in his addenda p 1025.
Many historical facts stated - Many legal rules and principles
announced and many citations are common to both - And
assuming that Each performed his duty faithfully this
may unavoidable. The order - manner and scope of the two
are entirely different. Each furnishes Evidence of Labor,
thought and study. The Labor is not a mere abridgement of
the Earlier - and could not have been written from it.
Each has very many citations not found in the other.

S p 607 cites Laccarius. de Jure Mariti 11.4.121
and it is proved that two Editions of Laccarius have been
examined and there is no mention, as no 12. Whereas magis
the same citation and so does Wallace p 633. But
this author is not cited in L, note.

S says p 607. "The United States, in its treaty with England
of 1795 admitted the right to capture Enemy's goods in neu-
tral vessels.

L says "the one case has a treaty been concluded by the United
States containing a different principle. Except the one of 1794
with England and which expired before the war of 1812; which
in the next year 1795 a treaty was negotiated with Spain

Mr Wing, for whom for ground as
It is contended that D in transposing from L confounded
the two treaties. This is possible -
Jay's treaty was signed 10 Nov 1794. It was submitted
to the Senate June 8th 1795 and on the 24th of that month
that body advised the President to ratify it. The treaty was then
first considered in 1795. It is commonly referred to as the treaty
of 1794 and probably it was through inadvertence that D re-
ferred to it as the treaty of 1795. But that the mistake
arose from copying, is a mere possibility.
D p 611 after some observations upon the Declaration of Paris
adds "on the debate on the Declaration of Paris and the
agreement in 1854, in the House of Commons July 4 1854
Hansard CXXXIV 1094; and in the House of Lords May 22
1856 Ibid CXLII 482
L p 773 cites, for the speech of Sir William Molesworth a
minister of the Crown, on the matter of the agreement of 1854,
Hansard's Parliamentary Debates vol CXXXIV p 1094 and p 1335
cites for the speeches of the Earl of Derby and Lord Clarendon
Hansard, Parliamentary Debates 3d series vol CXLII p 482
It is said that while there are proper citations for the
speeches. They are not, for debates which cover many
pages. This may be true. Except perhaps a reference to

to the first page of a controversy debate would be sufficient
Dr Cobb gives a list of treaties which this country may abrogate
which secure the freedom of Enemy's goods in neutral ships, without
declaring the right to take neutral goods in Enemy's ships.
It is claimed that of twenty-two, L. D has included in the list as
containing certain provisions, treaties which contained exactly
the opposite.
It is replied that D has said that "some of these treaties have previous
explanations or qualifications to the rule of "free ships free goods
and Enemy's ships Enemy's goods which were to extend thereto"!
It is claimed as additional proof of copying that Dr Cobb
in copying quoting from a treaty for which he refers to Wheaton
Wheaton spells the word Powers with a small p. just as
I had done quoting from the same Wheaton - which in
the Natchez it is spelled with a Capital P. This is true -
but does it prove that the one writer was copying from the
other?

Letter
Le 232/p 671 of three pages. on "Commercial Blockade"

L has a note of his pages at a point in the text somewhat sometimes before. note 234 p 819.

The two books having much in common are entirely unlike in their Cast and scope. Many authorities are common to both and Each has citations not found in the other.

L gives an Extract from a letter of Mr Cass to Mr Marcou June 27 1859. D gives the name. Neither tells where it may be found.

Both give the same Extract from a Speech of Lord John Russell. L says in the debate of the 14th of February 1861, citing Moniteur, Part Debates 3 Series Vol CLXI p 468

D says in a Speech of February 1861, not saying where it may be found.

L says The proposal of Mr Cass has found an ardent supporter, from whom speech before the Manchester Chamber of Commerce he gives a long Extract. citing London Times Oct 25 1862.

D says "Men who have postponed the limitation have usually contended that blockades were originally confined to portions places and ought again to be confined. This is affirmed as a practice by Mr Cass and by Mr Cobden in his Speech of Oct 24 1862.

It is said that Cooke did not have for the date of the Speech from L.

I says "One of the causes alleged by Napoleon for his Berlin decree of 21st Nov 1806 was that England by blockade the rights of Neutrals to unfortified cities and ports, to harbors and the mouths of rivers which as he maintained, according to reason and the usage of Nations is only applicable to fortified places". citing Martens Nouveau Recueil tom I p 439.
D Martens the same quotation. citing Martens tom I p 439
He adds "in this position Napoleon is without support"
Occasionally in the American dispatches there have been intimations of that sort, as regards, but no national act has been founded on that position and the United States have recognised real blockades and established the latest and the largest. He says among Commentators, an Italian Francisci Pacci sustains Napoleons position Principes du Droit Public Mar 1820 - but it is discarded by Hautefeuille, Ortolan, Manning, Hefftin, Kent Wheaton Phillimore and Wildman. He adds Mr Bernard (Commerce in Neutrade p 61 finds some diplomatic traces of the distinction and approves the American suggestion, as does M Casimir Périer in the Revue des deux Mondes 15 Jany 1862 p 434.
I says "The theory of blockade being confined to forti-

first place, is not even noticed by Phillimore or Wildman. While
Manning speaking of the Berlin decree says "the con-
fining of the right of Blockade to fortified places and leaving
harbors & principal from such restraint, was entirely new
and unheard of and in opposition to the clear principles
of Blockade. citing Manning's Commentaries on the Laws of
nations p 337. Hoffman citing Martinefville, includes also
also the Coasts of the Enemy as subject to belligerent rights
Droit International § 154. He adds a quotation from Mr
Wheaton, letter to Mr Buchanan, Secretary of State July 1st 1846
MS Ott p 420 I says an Italian publicist Ludovici Palli
maintains that "the Laws of Nations only permits the blocka-
ade of fortified places" citing Principes du droit public Mar-
itime tradotti par Galiani p 160. He says p 420 Hostilities
ceased from the date of Swedish treaty of 1667. that the prin-
ple involved in the Berlin decree is not wholly without
precedent. (Commercial Blockades p 61. I says "Hauteff
declares that a belligerent who attacks his Enemy may do
it on whatever points he thinks proper and that the right
of Blockade applies not only to garrisoned and fortified
places but to cities and unfortified commercial places.
(Droit Commercial I IV. II tit 1 ch 2 sec 2 § IV No 293
I in note 239 p § 44. says a recent French writer declares

that the validity of a blockade should depend on a bona-
fide attack by land, that a port should not be consid-
ered invested when invested also on the land side -
Rome ces deux Mondes 15 janvier 1862 p 43.

Fifty sixth
No 235 p 640 is of three pages. On "Notification of Blockade"
This is claimed to have been taken in part from L, note 234 p 642
of letter more than a page, and three others
The originality of the first, fourth, sixth, eighth and ninth
paragraphs of D, note is not questioned.
In the second paragraph D says. "In answer to a
further Enquiry. Whether it was the intention of the
Government to issue notice for each port as soon as the
actual blockade of it should commence, Mr Seward
said as reported by Lord Lyons to Earl Russell "That
the practice of the United States was not to issue such
notices, but to notify the blockade individually to
each vessel approaching the blockaded ports and to
indicate a memorandum of such notice having been given
on the Ship's papers. No vessel was liable to seizure
which had not been individually warned. The
fact of their being blockading Ships present to give
the Warning was the best notice and the best proof that
the port was actually and effectually blockaded".
This statement might have been found in D p 4 364 d.
But D adds. an extract from a letter by Mr Seward to Mr
Adams, which is not found in L. letter of June 8 1861.
"The President's proclamation was a notice of the intention to
blockade"

I p 442 gives a long extract from a letter written by Mr Marcy to Mr Buchanan April 13th 1854. citing Wheaton Comp Dor. From this D might have obtained the first sentence of his second paragraph. I can have no quotes from Wantzenau. And from that quotation D might have obtained the second sentence. I refers to Droit des Nations Neutres tom II p 216 - D refers to Droit des Nat Neutr II p 214.

I says p 442. "The rule to which Mr Marcy objected is adopted by the United States in treaties with Chili of 1832 and with Peru Bolivia of 1836. Statutes at Large vol VIII p/p 437. 492. D in the third sentence, says The treaties of the United States with Chili in 1832 and Peru-Bolivia in 1836, prohibit taking in the cargo after the blockade begins - U S Laws VIII 434, 491 He adds While other treaties with South American States allow all vessels in port to depart, without reference to the time of taking in cargo. (Wx 462. 495) In the first paragraph. D says Judge Betts, of the United States Court for N-ew York, having decided that a vessel leaving a blockaded port cannot take with her cargo shipped after the commencement of the blockade, Mr Seward communicated that to Lord Lyons

as the rule to be followed. (Mr Seward to Lord Lyons 16th October 1861 (Dipl Corr 1861. 173)

L says p 643 that Lyons announced to his British Colleagues the receipt of a note from Mr Seward under the date of 16th October 1861 to the effect that the judges of the Courts of the United States for the Southern District of New York having recently decided, after elaborate arguments of Counsel, that the case of blockade does not furnish a test, in a blockade port, to take on board cargo after the commencement of blockade; with a view to avoid any future misunderstanding on this subject, you are informed that the case as thus interpreted by the judges will be expected to be strictly observed by all vessels in ports of insurgent States during the blockade by the Naval forces of the United States. (President's Message 1861-2 p. 173.

It will be observed that D refers to Dipl Corr.

D has citations - very many which I have not.

Fifty towns
ii 239 p 647 is of little more than a page - on "Municipal Surveillance"
At same place I has a note of six pages - note 241 p 645
The originality of D's first paragraph, which is nearly one
half of the Entire note is not questioned. In this
paragraph he says In the civil war in the United States
Congress passed an act authorizing the President to
close any or all ports of Entry, in which duties could not be
effectually collected by the means provided by laws. The
Act declared any vessel forfeit which should attempt to
Enter such port after it should be so closed.....
In the second paragraph he says "The British Government
made known unequivocally that they would not recog-
nize a right in the United States to close, by municipal
acts the ports in the possession of the insurgents, which
they would admit the right to blockade them, as a
belligerent Act. Neither would they acquiesce in spe-
cial prohibitions of municipal laws at the same time
with a belligerent blockade (Lord John Russell to
Lord Lyons July 19" 1861.
I page 650 has a long quotation from Lord John Russell,
letter to Lord Lyons, July 19. 1861 citing Parliamentary
Papers. North America No 1 p 44
From this quotation D might have written the second para-
graph

of his note, instead looking further.

D in his third paragraph says. The ports of the Argentine Republic were blockaded by England and France and the ports of Mexico by France in 1837-8 although a general state of war seems not to have been publicly recognized

I page 445. Says "though a blockade is in its nature a belligerent Act," "the blockade of the Franco Egyptian fleet at Navarino in 1827 was instituted during a period of profound peace. Such was also the blockade of the Argentine Republic, commencing in 1838 by England and France, and which was submitted to by other nations, though Contraband articles destined for those ports were released, on the ground that notwithstanding the blockade France was not at war with the Republic" citing Rauterfeuille.

D in his third paragraph, says During the war of independence between the South American States and Spain the Spanish government, seems to have attempted something like a combination of belligerent blockade, and municipal prohibition of trade. The United States insisted upon the right of Neutrals to trade at the ports in the hands of the patriot Government against Everything

Cuba a blockade jure gentium - Three Governments having
formed Constitutions of the Cortes, with civil institutions in
actual operation, although their independence had
not been recognized by the United States - citing the Monroes
correspondence of 20th and 25th March 1816 with Don Onis.
Don Onis's instructions to Don Erving Sept 26th 1816 - Mr Adams
instruction to Mr Nelson 24th April 1823. Cong Doc 1824
2 page 446 "During the revolutions of Spanish America
the Mother Country attempted to impose against foreign
Powers, the Exclusive system of the Colonial laws, which were
now resisted by the United States". Mr Monroe Secretary of State
in a note of the 20th March 1816 to the Spanish Minister,
having objected to the blockade of the Spanish
Coast in South America .... and declared that it
must be confined to particular ports, and an adequate
force stationed as near to it, Don Onis replied
March 25th 1816 - and defined the position of Spain -
citing American State Papers Vol 14 p 156. He then gives
a quotation from Don Erving's letter to the Minister of
foreign affairs of Spain - citing Ib p 156. He next gives
a long Extract from Mr Adams's letter of instructions to
Mr Nelson Minister to Spain, of the 24th of April 1823.
Citing Cong Doc. Accompanying Pendleton, Message Doc 1824
pp 269-285

D in fourth paragraph says In 1836 Mexico attempted to close the ports of Texas by Municipal decree unaccompanied by Effective blockade

I page 447 says Without pretending to give the proceedings the character of a blockade and without the means of doing so by the interposing of a competent force, Mexico by a decree of the 9th of January 1836. declared all the ports and harbors on the Coast of Texas. from Longitude 94° 50" to 110° 10" West of London closed to foreign Commerce and the Coasting trade. Cong Doc 25th Cong 2d Sess H of R No 75

D in same paragraph says New Granada in 1861 announced the closing of certain of her ports, then in the possession of parties in a Civil war. and the British Government admitting the right of New Granada to close ports under actual possession, instructed Admiral Milne to disregard the closing of the ports, unless on the principle of an Effective blockade.

I page 448 says Lord John Russell in the House of Commons admitting the right of New Granada to close the ports under the circumstances stated and declared in reply to an Enquiry made of him, that Admiral Milne acting under instructions from her Majesty has ordered the Commanders of her Majesty's ships not to recognise the closing of the ports

The last two lines of D's note state a peculiar case which grew out of the Circassian intervention - This is not noticed in L.

I p 446 says "This views was communicated to the Government of the United States, and if its instructions Mr Erving -- declared to the Minister of foreign affairs of Spain Sept 26 1816 - Then a quotation.

D says "His (Mr Adams) instruction to Mr Erving Sept 26 1816." This is claimed to be a case of wording copying.

gly Rights

241 p. 690 i of nine lines "Montesquieu, Droit N-at Navir tit 11. 12 and in his pamphlet on the Trent affair puts a distinction between the right of visit and search and would confine the belligerent to stopping the vessel and inspecting the papers furnished to him and would make the papers conclusive on the question of Nationality, ownership, contraband and destination. But this is merely a suggestion of the learned Commentator as to a proper policy and has no support of authority either in the practice of Nations or the works of publicists. And he refers to his note ante 6 J. Sq. 104. 223.

I, note at the same place is two thirds of a page - in two paragraphs - Note 242 p. 751.

In his first paragraph he says "Montesquieu questions whether even as a belligerent right, search can be sustained at all on principle. Not able expounder of the rights and duties of Neutrals does not confine his investigations to the practice of Nations even to the opinions of jurists in Text books writers on the civil. Droit des Nations Bynk tit X I. X II - Lawrence on Visitation and search p p 15. 16.

D speaks not only of what Montesquieu says in his book but of what he says in his pamphlet. I does not maintain the pamphlet.

D says Montesquieu would confine the right of the belligerent

to stopping the voyage and inspecting the papers presented to him and would make them prejudicial on the question of nationality, ownership, contraband and distination. D does not use this language, but he says Mantefeuille denies the right to make investigations touching opening the Mail envoys and interrogating the crew with a view of elucidating the official papers. In substance, the opinion of Mantefeuille appears in both. D says this opinion "is a mere suggestion of the learned Commentator and has no support of Authority in the practice of Nations or the works of publicists". L says. "That learned Expounder of the rights and duties of Neutrals does not confine his investigations to the practice of Nations nor to the opinions of previous institutional writers"

It is said that Phillimore and Wallace do sustain Mantefeuille. They also distinguish between visit and search but they do not say that the papers presented should be conclusive on the question of Nationality, ownership contraband and distination.

But however this may be, what did Lord Cairns his criticisms of Mantefeuille, position from L?

Hyginus
247 a 712 is of four lines. He says the Establishment of the Empire in 1852 has changed the French Constitution. The power to make treaties is now solely in the Emperor; and a treaty of Commerce has the legal Effect of a legislative Act, in respect to duties and the importation and Exportation of goods. (Annuaire des deux Mondes 1852-3 p 952. 1853-4, 491). (British Annual Reg 1860 p 227.) (Tripier, Code politique 329. 388).

I have a note of half a page at 1 am pleas - Note 247 a 872. I give a history of the Change and says "By the treaty-convention of November 7th (10th) 1852, on the re-establishment of the imperial dignity, in the person of the Emperor Napoleon III, the Constitution was maintained in all matters, in which it was not inconsistent with the treaty-Convention; and by a treaty-Convention of December 25th (30) 1852 it was Expressly provided that treaties of Commerce, made by virtue of the 6th article of the Constitution, should have the force of Law, in modifying the Existing tariffs. Annuaire des deux mondes 151-2 a 952 to 1852-3 p p 887. 891. This power was Exercised by the Emperor in carrying out, through a commercial treaty with England of January 23 1860, which abandoned prohibitions and substituted for high duties on the remaining articles, a tariff which could not Exceed thirty per cent, in return for Equivalent stipulations on the part of England.

the principles of Economical reforms suggested in his famous letter of January 5 1860 to the Minister of States. The British treaty, so far as regarded the French sanction of it, contained ~~the stipulation~~ [illegible] note stipulation clause usual in all cases, while the 20th article declared: "The present treaty shall not be valid unless Her Britannic Majesty shall be authorised by the assent of her parliament, to execute the engagements contracted by her in the articles of the present treaty". Annual Register 1860 p 227. By the previous constitution of November 4 1848 ch V § 5-3 the President had the power to negociate and ratify treaties but it was expressly provided that "no treaty is definitively made, till after it has been approved by the general assembly". The constitution of January 14 1852 substitutes fait for négocié et ratifié. Duvin Code politique p p 329. 388.

I might have omitted this note from reading it; without giving further.

It is argued that this may not the proper place for either note as the topic relates wholly to treaties of peace. But the topic speaks of the power to make treaties of peace of alliance and of Commerce.

It is suggested that I does not follow it in his citations to the Annuaire. I cite the Annuaire. 1852-3 and 1853-4, which

I cite the Annuaire 1851-2. 1852-3

It is also suggested as an indication of copying that Each refers to page 952 of the Annuaire and that the reference should have been to page 951

Of the notes of this class, the Master finds that the thirty fifth - note 117 p 277 - the thirty seventh - note 122 p 295 - the forty first - note 131 p 319 and the forty fourth - note 160 p 417. do infringe the Copyrights rights of the Complainants. That the forty seventh - note 160 p 417 in which is cited of the correspondence the letter of Mr Cass to Mr Clay Minister to Peru Nov 26 1858 which the Complainants have printed and cited in Manuscript and that the fifty fifth - note 232 p 671. in which is cited of the correspondence the letter of Mr Webster to Mr Buchanan Secretary of State July 1 1846 which the Complainants have printed and cited in Manuscript. do severally infringe the Complainants Copyright right to the extent of such citations - But the Master has not found satisfactory Evidence of copying by the respondents in any of the notes in this class. or rather he has not found proof sufficient to overcome the presumption of innocence. Some of the notes in this class contain many matters in common.

Notes of the Fourth Class

First
Study p 23 is of half a page. In the first five paragraphs D
gives the definitions of the Law of Nations - in the lan-
guage of Wheaton - Woolsey - Cairns and Hunt.
The first sentence of the sixth paragraph is "Austin
points out the fault of the older Continental Writers in
Confounding the rules of international morality, as in
their opinion it should be, with the actual international
Laws in operation among nations. (Province of Jurisprudence 235 Note)
The second sentence is "Rauterfeille divides international
Law into two parts which he calls principle and secondary -
the first he says containing the principles, the absolute basis of
of the Law, and the second the measures or provisions
for calling up these principles and securing their Execution.
(Droits des Nations Neutres 1. 6-13).
The third sentence is "In the application of this theory is-
sues may be formed that the distinguished Writer usually
treats the primitive Law, or the rule or fountain of
first principles, as of actual Authority, When no Ex-
press agreement departs from it; and to much of the
practice of Nations as consists in judicial decisions
adopted Enforced and acquiesced in, he considers
of less authority than the primitive Law as it
lies in the breast of the text writers.

L has a note of a page and a half at the same place note 8 p 26. He begins with a quotation from Asserius - Calling them pro. Provincia of Gerrespondimus de- fined p 235 note 2d Edition. He next gives a brief Explanation of Rantzenelli's system.

The first five paragraphs of D; note are not questioned

The first and second sentences of the sixth paragraph he might have written without other information than that derived from L, note. The third and last sentence could not have been taken from L; note. It is rather a forecasting of what will be found when Rantzenelli makes an application of his theory.

It is in evidence that Rolls of Rantzenelli found in D appears on page 13 of that Author - which the passage in L Extends over pp 6 & 13.

If the passage in L Extend over pp 6-13, it would seem to be proper on D's part to cite pages 6-13, as the whole bears on D's Explanation of Rantzenelli, system, and [redacted]

record
The 16th 41 is of nearly seven pages - "Recognition of Independence".
The first paragraph - a page and a half - is a statement of what the Editor considers to be settled principles of international law. The rest of the note is essentially historical. In this part of the note are extracts from official despatches and the messages of Presidents Monroe and Jackson.
I has a note at same place of four pages. Note 19 to 47
It is mainly historical. It contains extracts from despatches, from President Jackson's message in Dec 1836 and from a speech of Sir James Mackintosh June 15th 1824
They have many citations in common. Each has some which the other has not.
There can be no doubt that D have carefully studied the subject.
D is correct, has transposed two typographical errors found in Phillimore. But this did not come from copying I.
I quotes from a speech of Sir James Mackintosh and refers to his works page 749 - D cites Mackintosh, works III 749
One of the extracts explains that the speech is to be found in the one volume American Edition - p 444 of the three volume English Edition and 749 of the one volume English Edition - I has two other citations to Mackintosh, one vol III 444 the other vol III 446
~~I gives July 4 as the date of Canning's speech to which D - Nearly July 3.~~

L in note 18 quotes from a speech of Mr Canning in House of Commons - July 4 1825. D in the fourth paragraph cites Canning's speech July 4th 1825. The speech was February 3rd. L has a quotation from President Jackson's message in December 1836 - D quotes the same and more.

~~Neither of them~~ L cites Webster, Works Vol VI p 434, for his letter to Mr Thompson April 15 1842. D quotes two lines from it. The whole remark of D. on it is found in L and much of it is not.

Third
[20 & 55

is of fourteen lines. The first paragraph is "During the Crimean war the British Courts held that the Ionian Islands were not parties, and bring to made of Great Britain and that their vessels were not forbidden to trade in Russian ports. The Leucade, Spinks 1. 5 49
The remainder of the note is a recitation of what has taken place since 1864, since the Complainant printed his last Edition.
I has a note of less than half a page - at same place - note 23 & 61, in which he says, an opinion had been given, as announced by Lord John Russell in the House of Commons, by the Law officers of the Crown, that the Ionian Republic could not be considered as a neutral State and that the Ionian Republic must take part with Great Britain with respect to the war in which the Emperor, though not bound to carry on active measures of warfare, and that their vessels sailing under the Ionian flag were not to be considered as sailing under a neutral flag. - - It was however subsequently decided in the British Court of Admiralty, that the right of Great Britain was drawn from treaty not from conquest, and that by the seventh article of the convention creating the protectorate, the trading flag of the Ionian Islands was acknowledged as the flag of a free and independent State. Great Britain might have included the Ionian Islands in the war, but she had not done so. The Ionian Islands are not included in the treaties made by Great Britain unless specially named, and even Ionian vessels within the Clauses of the order in

Council of the 15th April 1854 which forbade British ships from trading with Russian ports. Spinks Vol 1 N.S.p 549 The Hercules

The first part of paragraph 7 D might have been written, from the note of A - and it is quite probable was suggested by Lr note. But there is no evidence that D did not examine the case referred to, for himself: and the burden of proof is on the complainant

Dr Twiss cites the Hercules but cites it from Admiralty Prize cases.

The other paragraphs of Dr note are not objected.

Fourth
ii 26 p 61 ii of nearly a page.

Nis i the first paragraph. "By the treaty of Zurich of 1859, carrying out the preliminaries of Villafranca, Lombardy with the exception of the fortresses of Mantua and Peschiera was transferred by Austria to France and by France to Sardinia and is now a part of the Kingdom of Italy. Venetia remains under Austrian control". L has a note of twenty one pages - note 5 S p 139 - some twenty pages from where D has placed his note.

L page 153 says "The preliminaries of Villafranca of July 1859 agreed to between the Emperors in person, were between Austria and France alone. They stipulated that the two Sovereigns would favor an Italian Confederacy ----- that the Emperor of Austria would cede to the Emperor of the French, his rights on Lombardy, with the exception of the fortresses of Mantua and Peschiera and that he would transfer the ceded territories to the King of Sardinia that Venetia remaining under the crown of the Emperor of Austria would make a part of the Italian Confederation.. These preliminaries were incorporated into the treaty of Zurich between the same parties, of 10th November 1859: which provided in detail for the conditions of the transfer of Lombardy. By a treaty of the same date, [redacted] the

obligations connected with the transfer of Lombardy to France were approved by him. A third treaty to which Sardinia as well as France and Austria was a party made the wishes of the parties to complete the conditions of the peace, the preliminaries of which were agreed on at Villafranca and had been converted into a treaty concluded the same day between France and Austria"
In L; in the text this page is referred to - Note. "Lombardy".
L; note does not say that Lombardy is now part of the Kingdom of Italy. With this exception D's note might have been written from L; L has a note of nearly a page at the same place as D, - note 29 p 72
It is conjectured that the first half of D's second paragraph is taken from this note of L.
D says "The relations of Hungary with Austria have been in a state of change since the rebellion of 1848. On the suppression of the rebellion, the Emperor made the attempt to merge Hungary in the Austrian Empire and governed and exacted absolute power over it until 1860, when he issued his diploma of 20 October 1860 and his patent of 26 February 1861. By the diploma and patent, he proposed a plan of government in this form: There should be an Imperial Diet or Reichsrath for the Entire Empire and separate diets for the component parts of the Empire. The supreme Legislative power was to be in the Emperor, but the Reichsrath was to have a consultative vote, and its concurrence was

was necessary to sustain Exercises of Authority, as the Levying of Taxes the raising of Troops and the Imposition of duties, the Usual precautions of a Constitutional Government. The Ancient Constitution of Hungary was to be restored, Except that the Diet may dispute with its jurisdiction over subjects placed in the Chapt of Imperial Powers and connected to the Emperor and the Reichsrath. Under the Statute the Hungarians did not assemble, but Hungary refused to send deputies to the Reichsrath, so that the Latter were not having any Existence in fact. -- The Hungarian Diet is visible on relating to strictly two powers - the Levying of Taxes and the raising of Troops".

I says "An Imperial diploma issued on the 20th October 1860 concerning the Political organisation of the Monarchy - the rights of each of the several Kingdoms and Countries, as well as the definition consolidation and political Union of the Common Monarchy, was followed by the organic Law of the 27th of February 1861. All Legislation & Exercise of the Emperor, in concurrence with the diets or ~~Council~~ Comicia of the Empire - Reichsrath. To the Latter belong all matters which are considered common to all parts of the Empire viz the currency, customs telegraphs, Rail-roads postal regulations, Taxes and public debt. The Diet of Hungary has in conformity with its ancient Constitution, all Legislative powers Except those granted to the Comicia of the Empire". - - - citing the Annuaire and Le Nord 24th October 1860. 8th March 1861.

"At the opening of the Comicia of the Empire 30 April 1861 Hungary was not represented."

D speaks of the patent of 27 February 1861. L puts it the same date - or rather, he calls it the Organic Laws. The date of the paper is 26th of February - The date of Le Nord in which it was published was 27th February. D says the Reichsrath was to have a consultative voice and its concurrence was necessary to certain species of enactments, as the levying of taxes - the raising of troops. L does not mention the raising of troops as one of these species. Whether the raising of troops was or was not one of the species, is not explained from L.

D says the Hungarian diet insisted on retaining to itself two powers - the levying of taxes and the raising of troops. This is not in L; note 29. L says on the opening of the Council of the Empire 30 Sept 1861 Hungary was not represented. D says that the Hungarian diet assembled; but Hungary refused to send deputies to the Reichsrath, so that the latter never had any existence in fact. This is not in L; note 29.

The two notes differ widely in form matter & style. D cites no authority - L cites many.

The last Line of D; second & last paragraph - all after the word "existence in fact" is entirely unlike any thing in L; note 29.

Polish

i 27 p 64 is of less than half a page. It is contended that the first three sentences of this note are taken from Li; note of seven lines at the same place - note 30 p 75 and his supplement pp 1 - 3.

said first three sentences are. "In 1861 the Diet of Poland was reestablished, and the Emperor was to act as King of Poland, in matters relating to that Kingdom. A new insurrection in Poland in 1862 growing out of the Revival of a stringent system of conscription enforced then, was followed by a convention between Russia and Prussia; in which Russia agreed to drive bands from her borders all Polish insurgents and to permit the entry of Russian forces into Prussia in pursuit of insurgents. This convention (known as the convention of St Petersburg) was strongly objected to by France and England, but was effectually.

The rest of the note is not important. At the end are cited, Annual Register 1863 pp 282-292 - appendix to ditto 330-351 - Ditto 1864 pp 193-207. Le Nord March 17, 24 1863.

Li in his note 30 says "By an Imperial Ukase of 14(26) March, the Council of State of the Kingdom of Poland was reestablished, all officials duly sworn to the

in the name of the Emperor, as King of Poland". citing le Nord 6 Avril 1862. "Ukase of another date the 1st (13) January 1862, the special department in the Council of the Empire for the affairs of Poland was suppressed, as being superfluous, since the institutions of the Council of State for the Kingdom of Poland". Ukase 22 Janvier 1862"

"Institutions of Council of State of the Kingdom of Poland" D has "Diet of Poland".

I do not find for pp 1-3 of the supplement, in which that the insurrection growing out of the raising of a stringent system of conscription enforced then was followed by a convention between Russia & Prussia, in which Russia agreed to drive back from the borders all Polish insurgents and to permit the pursuing of Russian forces into Prussia in pursuit of Polish insurgents" or any thing like that.

On p 4 of the supplement is a despatch & a note accompanying a despatch from Drouyn de Lhuys to Baron de Gros in London, in which is this language "The measures adopted by the Russian Government to carry out the recruiting in Poland, having led to riots" &c

"The Government of his Majesty, has learned not without anxiety that the Cabinet of Berlin has signed a convention with that of St. Petersburg, by which the Court of Prussia commits

to allow our Russian troops to enter its territory in pursuit of armed bands entering a foreign state. and engages to disarm bands on to Russian territory, until a sufficient national force presents itself, the movements in pursuance of the Russian troops.

It would seem that even this hardly warrants the statement of D. ~~The Cyclopaedia Annual of 1863.~~ The measures adopted to carry out the convention, were not mutually a consumption. The Cyclopaedia - Annual of 1863, does say in any a consumption. Confirmed with great vigor.

eighth
= 30 p 77 is of a page. It is examined that the first five sentences of D, first paragraph and his first two sentences second paragraph are taken from L; note of the pages at the same place note 38 p 91 and his addendum § 43. § 44

Both notes are historical, though unlike. They contain coincidences of phraseology - such as "an attempt was made" - "In 1446" "Parliament met in May 1446" - "with the approbation of the diet". "Austria, Wurtemburg, Bavaria and Hanover" in same order.

D has a cluster of citations at the end of his fifth sentence "Annual Register 1448. 362; 1449. 347. 362; 1450 343. 320; 1451. 276. These are all at the end of the second paragraph of L, note 1. 92 in the same order. with two others not in D. L discloses the pages of the Register to which he refers in brackets. or rather places a bracket after the pages. The annual Register is a book I have volumes of which is on two shelves. One page has the numerals only - the other, the numerals with a bracket after them. D tells us that he was familiar with the book. did he obtain these citations from the book or from L?

D might have written these five sentences from L; note. And as for these, how D did not examine the books to which he refers it is remarked that when he writes of events

occurring since the last Edition of L was published, but the States parti generally entitled permitting any reference or any means for verifying his statement. The answer is that when D wrote, three Courts were generally to be found in both L. The second and last paragraph of D is taken from pp 4 5 of L and his addenda 4 & 3, 4 & 4, as is evident. But D p 74 says "The States of the second order began the movement in 1683, Conclusion annexed 4 Austria. Harpy taking the lead. This proposition known as the Swedish project was declined 4 Prussia" I do not find any authority in L for the statement that this proposition was known as the Swedish project.

At the end of his note D cites Le Nord Aug 15, Aug 31 Oct 14 Nov 1 and 21 1862. But L cites Le Nord as authority for each of his several statements of fact, and he makes many which D does not. And it is proved that D has cited Le Nord only when it had been cited in L. All D's citations of Le Nord are found in L pp 4 3. 4 4 and 4 8 5.

In the opinion of the Master the final paragraph of this note of D does infringe the rights of the Complainant

Howard
L 41 & 126 is of six pages. "Intervention in Mexico. Recapture of the Empire"
L has at the same place a note of twenty one pages - note 53 & 139 -
a note of three pages - note 164 & 507 and a note three pages
in his addenda - p 446.
It is claimed that the second, third, fourth, fifth
sixth and seventh paragraphs of D, note were
taken from the three notes of L. to which I refer the
reader in his index under the head of "Intervention rights of,
in Civil War".
The materials for D's four paragraphs may be found
in L, three notes. The notes are mainly historical and
the facts stated in these parts of D's note are generally
in L. D does not cite all L's authorities and he has two ci-
tations not in L viz: U S Dipl Corr 1862 p 401 - page 128
Mr Seward to Mr Dayton June 21 1862 - page 129 [illegible]
D page 126 says "The claim was declared to be first bonds
of the Mexican Government were held by the citizens of
those Countries, for which the Mexican Government had
neglected to provide payment, and which it was doubt-
ful if Mexico had ever the ability or willingness to
pay. Injuries it was declared had been inflicted on
citizens of those Countries residing in Mexico, in their per-
sons and property, by persons in possession of the government

for which no redress could be obtained". This is hardly warranted by any Statement or supported by any quotation in L. D does not say that these claims were made or declared in the convention. For he adds "Generally the objects of the convention was defined to be to demand more efficacious protection for the persons and property of their subjects, as well as fulfilment of the Obligations contracted to their Majesties".

L has a quotation from the convention of London page 156 D has the same — with the Exception of a few words. They differ widely from the Text of the convention as known in Ex Doc No 100 p/p 146-7 3d Cong. 2d Sess.

L has a quotation of several lines from the Queen's Speech of February 1862 in which Our opposition to a motion for the convention, the many committees of various parties and by the Spanish Government in Mexico upon various foreign Ers resident in Mexico &c — D has the same. The second word "various" is not in the original.

The remainder of D's note is devoted to what he calls often L's Petition was omitted. He gives a very full account, quoting from Mr Buchanan, Mr Drouyn de L'Huys — and a Speech of Lord Palmerston

nth
-46/137 is of more than half a page.

L has a note of less than seven lines, at the same page - note 56 p 165, from which, it is claimed the last two sentences of D; first paragraph is taken. "No one maintains" D says "that a form of penalty imposed as an exclusive one of the less grave can ever be dispensed with. Westlake; Pr International Law § 87". The French law of March 1855 requires the transfer inter vivos of real property and of corporeal personal property to be recorded in the bureau of hypothecations.

L says "The French Law of 23-26 March 1855 requiring every act in reference to the transfer inter vivos of real property, or of rights susceptible of hypothecation to be inscribed in the bureau des hypothèques de la situation des biens, prevents the operation of transfers made elsewhere, according to the laws of the place where made. Fiore Codes Francais p 161 4th ed. No one maintaining that a form of penalty imposed as an exclusive one, by the less grave, can ever be dispensed with. Westlake Private International Law § 87".

It is apparent that D's statement of the French Law of March 1855 is not L's statement of that Law. D cites no authority. L cites Fiore. and testifies - record p 130 - that "in translating from Fiore, from which work he cites the Law, the word "real" before "rights" was accidentally omitted by him". .....

"Domat translates "droits réels" as real rights corporeal personal property". If Domat says the Law and made a mistake in translating it, the Plaintiff has no cause of complaint. It is hardly conceivable that he was attempting to put L's Statement of the Law into different Language. He must have known that "rights susceptible of hypothecation" were not necessarily "corporeal personal property".

Wirt
C47 p139 is of less than half a page.

It says "The treaty of the United States with France of 23 February [45-3] is intended to authorize citizens of Each Country to hold real and personal Estate in the other, in the same manner with its own citizens; but the treaty was made up on the theory, that Each state of the Union had exclusive control of that subject within its own limits. It accordingly takes the form of authorizing it as far as the laws of Each State permit, with an Engagement on the part of the President to recommend to the several States to pass laws to Enable the treaty to operate and with a right reserved to France to govern herself by rules of reciprocity (US Laws X 994) The latter opinion seems to be that the treaty making power of the General Government, is sufficient, under our Constitution to reach the objects of this treaty, and to Establish by its own force, a law which shall be paramount in Each State. Hamtrax v Martin Cranch VII. 627. Ware v Hylton Dallas III 242. Opinions of Atty-Gen V III. 415 - Wallace; Indian Laws 157, where a great many cases are cited in support of this power in the General Government. Elliot; Comm IV. 420. Jefferson; Works III. 365."

The substance of this note is; note [57] p 164. also an extract from

an Opinion of Attorney-General Cushing in which are cited Fairfax's Lessee v Hunter's Lessee 7 Cranch p 627 and Mason v Haytons 3 Dall p 242 and for this opinion he refers to Opinions of Attorney-Generals Vol VIII p 415.
The last three citations of D are not in L; and Wallick p 157 to which D refers has also and many others.
D adds "Treaties on this subject, more or less for the same general purpose & with the same Russia Austria Naples with most of the German States and of the States of South America and with Mexico and the Hanseatic Towns. U S Laws VIII IX. X and XI. These treaties are mentioned by L in detail and the same volumes of U S Laws are referred to by page.
It appears that D in his manuscript - referred to his pages but struck them out and cited the volumes "under the name of each nation".
The work might have been written on information derived from L - The citations could not all have been taken from L.
The only question is, did or did not D go to the sources?
If it proves that he made an unauthorized use of L
note 2 For aught that appears, D may have gone to the sources indicated
by L . In this case it would seem that the whole note must be enjoined or not part of it

Curtis
52 & 150 is of nearly a page - in two paragraphs.
L has a note at the same place, of not quite a page. Note 61 p 180. It is claimed that D's first paragraph is taken from this note of L.
D says "Story regrets this state of the Law, but says it is too firmly Established to be shaken except by legislation. L quotes Story to the Effect. Both cite Conflict of Laws § 257
D says Westlake also condemns the principle, and gives his opinion that Each nation should refuse to Enforce Contracts of a contract which has for its object the violation of the Revenue or Navigation Laws of another, a indemnity for Loses incurred by violation.
L quotes from Westlake to the same Effect - Both cite Pr Int Law § 199
D says "Pfaffen (Rev de Droit Int § 36-39) takes the same view of what the Law should be and cites a Decision of the Court of appeals for the Rhenish Provinces, to the Effect that a contract to smuggle into another country was void as against good Morals and the public interests"
L gives a quotation from Pfaffen of like import. In this he cites Droit Int Public par Bergson p. 66.
D's citation is from the German Edition - L the German & the French. The one is cited ½ page - the other ½ Section

It appears that D made his notes on the interleaf and having written an abstract of the quotations of I below Nyffler as I have done. that he subsequently struck it out and substituted the citation from the German Edition. It is thus a reasonable presumption that he also consulted the authors referred to.
D says. Of the same opinion are P Theiss (Abhandlungen 55-64) Kent (Comm III 266-6). Marshall (Insurance 569-611 and (Chitty Commerce 483). These four citations are not in L. The other citations are in the same order in both notes.
The second paragraph of D is not important.

wer th
= 58/p 153 i of sixteen lines. The text says "that the private
vessels of one State, Entering the ports of another are not
Exempt from the local jurisdiction, unless by Express
compact and to the Extent provided by such compact"
D says "The Author is understood to have qualified this
general Statement respecting private vessels in his re-
view of Ortolan, Diplomatie de la Mer in vol II of the
Revue Etr et Franc. The treaty of 1853 between France
and the United States adopts as to private vessels sub-
stantially the distinction made in the French Law as
Laid down and Explained in § 102.
I at the same place has a note of seven lines. note 67 p 191. in
which he says "The Situation is a notice of Ortolan, Diplo-
matie de la Mer, concedes that the proposition in the
text, which he had adopted on the Authority of preceding
writers, may be Controverted and admits of Exceptions. The trust
text on this subject the French jurisprudence and legislation have
Established the true distinction. . . . Rev de Droit Franc et Etr
Com 11 p 206. Many notes and quotations in this section p 201 infra
When stating the Law of France as to the Exemption of private
vessels from the local jurisdiction
I in note 70 p 204 - of three pages, says in his first paragraph
The convention of February 23. 1853 Art 8 between France and the

Practice Statute § 11 Edition; note infra adopts as to acts of interior discipline the principles of the Roman Law and submits all such matters to the courts, to the exclusion of the local jurisdiction."

The information contained in the first three lines above transcribed from D, note. might have been obtained from Σ; note. And it might have been derived from the books referred to

upon
= 62 p 165 of a page and a half is on "The Cases of the Creole" and nothing else. It contains a long Extract from a letter of Mr Webster to Lord Ashburton - states the position taken by Mr Wheaton in his article upon the subject, in the Revue Francaise et Etrangère IX 345 - the fact that the questions in dispute were submitted to the Commissioners under the Convention of February 8 1853 and that the Commissioners being unable to agree in view of the terms of the Convention referred to an Umpire, Mr Joshua Bates of London - It gives the propositions of Law stated by Mr Bates and criticises them - For his Extract from Mr Webster's letter, he cites Webster, Works VI 303-318.

2, Wolsey at same place of three pages treats of the case of the Creole and of other cases - He states the views contained in Mr Wheaton in his article in "Rev Etr et Fran tom IX p 345." He does not quote from Mr Webster's letter - but for the correspondence between him and Lord Ashburton refers to Webster's Works, vol VI p 303 - He says the Commissioners appointed under the convention of July 8 1853 being unable to agree, the claims were referred according to the provisions of the treaty, to the Umpire - He cites the "Report of Commissioners under Convention of 1853. p 242.

D testifies that he studied the "Report of the Commissioners" - He could not have found the name of the Umpire from pp 1-

note the two propositions of Law stated by the Empire.

I might have written the second paragraph of his article from what he might have learned of Mr Wheaton's views printed by L.

The fact which on to show that I did not see Mr Wheaton's article in the Revue is that he cites Revue Francaise et Etrangère IX.345. Whereas I cite Rev Et et Fr Tome IX - p 345.

In scope and plan the notes differ widely.

Westlake
[illegible]92 p 223 is of a page and a half on "Limitation and Prescription"
These are the first three sentences of D's second paragraph. "It
has sometimes been said, that the Continental writers treat the
rules of limitation as a part of the laws of property obliga-
tions and therefore not necessarily to be governed by the lex fori.
Savigny and Foelix have been adduced as witnesses. But any
language that may be cited to that effect will be found to
relate to prescription and not to mere rules of limitation. At the end of his
note, he cites Savigny System Bk VIII. 270. Foelix Droit Intern
Privé § 100. Story Conflict of Laws §§ 576-581. Westlake
Pr Intern Law §§ 250-252. New American Cyclopaedia
XIII. tit. Prescription. Blackstone Commentaries II. 263
Z has a note of thirteen lines at the end of the next preceding section
of the text. Note 89 p 288. He says "Including the Statutes of
Limitations which are those of the Country in which the suit is
brought and not those of the lex loci contractus. See on an
Examination of the different rules governing on this point on
the Continent of Europe as well as for the doctrine in England
and Scotland which is the same as in the United States
Westlake Private International Law §§ 250. 251. 252. Foelix
Droit International Privé Tom 1 § 100
Savigny says "According to the true principles, it is not the Law
of the place where the suit is brought, but the Law of the place

of the Obligation, which determines the time of prescription; and this rule Establishment for Exceptions in general is more Especially adapted to prescriptions, because the different motives on which it is founded are Especially connected with the Effects of the obligation itself. Savigny Droit-Romain par Guenoux - tom VIII Ch 18 373 - p 270.

It is not Easy to discover anything common to the two rules & after the observations of Savigny and Dalloz and Worthless D cites the German Edition of Savigny - & the French. It is said to be Easy to suppose that the passing of the two Editions should coincide - but it is not by any means clear. that Savigny is cited by both for the same doctrine.

Courtenay
v 95 p 227 s of four lines. D says The question of the liability of the body to arrest is now considered as part of the Law of remedy, and to be sought for in the Laws of the forum, both in England & America. It was formerly confounded with the question of liability to personal actions. Story's Conflict of Laws § 577. Henry on For Laws 81-86 Westlake Pr Intern Laws § 411

I has a note of two lines at the same place - note 90 to 290. in which he says. "Arrest of the body in England is now held to depend exclusively on the lex fori and not on the lex loci contractus - Westlake § 411 Phillimore vol IV p 702.

I says. Arrest of the body in England is held to depend on the lex fori and he cites two English authorities - D says it depends on the lex fori in England and America. and he cites both English & American authorities D says the question of liability to arrest was formerly confounded with the question of liability to personal actions. There is no such suggestion in I.

They have one authority in common. D has two which I has not - I has one which D has not -

Instruct

[101 p 239 is of about a page. The second paragraph a few lines is I claim my
extract from L; note at the same time, ~~extract~~ after lines - note 99. p 304.
In his first paragraph D says the subject of international prescription
is treated at great length by Phillimore. He then gives term of Phillimore's
views. In his second paragraph he says "The Supreme Court of the United
States in the case respecting the boundaries between Massachusetts
and Rhode Island say "There is no controversy in which this great
principle (prescription) may be invoked with greater justice and propriety
than in a case of disputed boundary." Howard IV. 689
I says "This same principle was recognized as the rule, in the suit
of Rhode Island against Massachusetts in regard to the northern
boundary of the former state decided in 1846. He then quotes from the
opinion of the Court eight lines - which quotation contains the
extract of D. I cite Howard's Rep vol IV. 649 Rhode Island vs
Massachusetts.
The afore said second paragraph of D, note is the only basis of the note
appealed.
Possible D might have copied his quotation from L,

Schmitt
C 105 p 255

ci of something more than a page on "Territorial Waters". He notes the views of many writers as to the extent of territorial right over the sea. Grotius, Bynkershoek, Azuni, Ortolan - de Martens & Raynneval - He cites Mantellini Droit Nat Mariti 1. 49. 239 and his refers Valin. Nesselin, Regnelom, Jacobsen - Hallock - Tellegen. Emerigon. de Cussy and Wildman

I beg a note to the last word of the Nepo Edition of the Text of a full page note 109 p 320 on the same subject. He cites de Raynneval - Locenius Valin. Sarpi and Mantellini Droit des Nations Neutres 2° Edition tom 1, ch 3 § 75

& cites Nesselin § 75 and in this edition Nesselin cites Mantellini tom 1 p 239. It is said that D's citation tom 1 p 239 is not correct for any Edition - but in it contain D cites rest follows L in this citation.

It is said that when D cites Jacobsen, Sea Laws 586, 590. There are not so many pages in the book - but this is not proved and if it is true, it would not be hard to prove copying of L.

Endorsed

d 108 p 258 is of the same three pages on "Municipal Sciences beyond the Marine League or common shot"

L has a short note on the same head - note 105 p 323 in which the reader is referred to his note p 266, note 105 of two pages. It is claimed that some parts of D's notes were taken from the two notes of L.

The notes appear to have been written for a different purpose, and they have not much in common.

D cites U S Laws 1797 ch 27; Rose v Himely 4 Cranch 241; Hudson v Guestier 4 Cranch 293; Church v Hubbard 2 Cranch 187; Hudson v Guestier 6 Cranch 281. Neither of these is in L; note: D cites for Lord Stowell; opinion in the case of Louis 2 Dodson 245. L cites 246. Stowell begins on p 245.

Both refer to the opinion of Dr Lushington in the Carolina case. L has a long extract from the opinion. D quotes a part of L, extract. It is in proof, that both have omitted the same line of the Original. D mentions indicates where the opinion may be found. Now long L. D says p 260 "This subject was discussed incidentally in the case of the Carolina which was a seizure on the high seas, not for a violation of the Municipal laws, but on a charge of unneutral misconduct of privateering & war". I do not find any authority for this, in L; note. L.

Mr Dana cannot tell where he got his quotations from the opinion of Dr Lushington. And Mr Moore had not seen it Elsewhere

Mr Pollen (Record 154-9) swears that both omit one whole line of the original and neither notices the omission. That he never saw a printed Psalter in any book though he had seen a printed copy of it in the Lawson library.

The master is of opinion that D took the Psalter as an example of this work from L, and finds that this is an example infringing the rights of the complainants.

Schlesinger
v 113 p 269 ci of minutes times on "National appropriation of ocean seas"
D refers to ten writers and cites two adjudged cases.
L has a note not on same plan - note 111 p 340 - in which he says "for an able analysis of Selden's Mare clausum, see de Ravneval De la liberté des mers tome II p pp 1-108. See also for an examination of his doctrine Hautefeuille. Droits des Nations neutres tit 1 ch 1 sect 4 § 2 tom 1 p 51.
D cites Hautefeuille liv 1. tit 1. ch 1 § 4 and de Ravneval tome II ch 1-108. The last page number is 107 - 108 ci the page of a new chapter.
D cites ~~Nine~~ writers and two adjudged cases not in L
L

incidents

121 p 291

ii of Vienna time. He says "When a revolution or forcible change of Government has occurred, a Minister who had been accredited to the Country and duly received by the former Government and remains over, will usually enjoy the immunities of a public Minister, although his own State may not have recognised the new Government as the real sovereignty. ---- ---- As to holding diplomatic intercourse officially with agents of a party engaged in a revolution against a State with which the United States holds friendly diplomatic intercourse, see the Howard, memorandum of March 13 and July 17 & 18 65; also the chapter in note 41 Ante on intervention in Mexico and recognition of the Empire. See also instructions of Earl Russell to Lord Lyons of 23d January 1862. Parl Papers, North America No 5

I has a note of some Minister being at the same place. Note 118 p 376, in which he says the passage of the text here noted is quoted in the instructions from Earl Russell to Lord Lyons of the 23d January 1862, concerning the Commissioners or Ministers from the Confederate States, sitting on board of the French Man of war - and a reference to Parliamentary Papers 1862. North America. No 5 p 34

The question is, did D take this selection from Lawrence - owing to the instructions? Then it was Lawrence that he did, besides what appears in the two notes

Is it proper that he did?

mutatis
to 12 Ph 303 is of more than half a page. The first sentence is "Rayneval says that a Minister in a Christian Country has no authority to inflict penalties upon his suite and no jurisdiction to decide controversies of legal rights among them and between his fellow-citizens residing in the Country." (Europ Wolff § 216) De Martens § 215. To this no objection. The next sentence is, "The Secretary of State in a letter to Mr Hay the United States Minister at Berne of Nov 12 1860 takes the ground that a Minister of the United States has no civil or criminal jurisdiction among his fellow Countrymen or over his suite and that what is called the Extraterritoriality of the Embassy relates only to what is necessary to the free discharge of diplomatic functions and does not make the place of the Minister's residence a portion of the United States in such a sense that private persons by surrounding themselves there for purposes of private contracts or Marriage or of business, can give to their acts Exemption from the Laws of that Country, or the sanction of the Laws of their own Country. If the latter Effect is produced it must be by force of Statute Laws. (U S Laws X 11.72 act 1860 ch 179) I has a note not at same word of the text, but to a preceding word in the same section, of near a page and a half. Note 133 Ph 398 In this note he quotes more than a page - citing the Case of Mr Hay Minister at Berne, Nov 12 1860. Department of State MS

There can be no doubt that the substance of the foregoing sentence is found in the quotations from Mr Capt's letter in L. Mr Lawrence writes that to the best of his knowledge there has been no printed copy of this manuscript Journal, save what may in his note. And there was no attempt to conciliate this discrepancy.

D Then deviates from sentences to the views of Dr Woolsey - citing Woolsey's Introd § 92 d/ . . This last sentence is a statement of what the British Government claimed and contended in the case of the Coastwise of Mr Gallatin the United States Minister in London - D does not say where the case may be found -

Mr Lawrence writes "The case of Mr Gallatin, coastwise is also mentioned by Dana p 303. I quote it in the addenda p 1006 - I have never known of its being stated elsewhere. It occurred while I was Secretary of the Legation, and the discussion with the foreign office was carried on by me - Gallatin's despatch & my private Memorandum: Record p 124.

I p 1006 gives a brief history of the Coastwise case to 1006 - and from this D might have written the last sentence of his note.

The Master finds that the second and last sentences do infringe the rights of the complainants

Wolf Fisk

W 129 p 303 is a short four pages on "Diplomatic Immunity in a foreign State". In it, D states what has been maintained by others and his own conclusions and opinions with his reasons therefor. It evinces much thought and study.

L has at the same place a note of three pin pages - note 134 p 399 and a further note in his addenda p 1006 - It is full of historical information and disquisitions of other writers of authority. It has many citations. D has not one.

It is claimed that much of the learning in D's note may be found in L's; and this is undoubtedly true. And it is equally true that there are many reflections suggestions and opinions in D, which are not in L's note.

It is manifest to the doubtful that D avoided no labor in preparing this note

wealth Island
ii 135 p 324 ii of more than half a page - in two paragraphs.
The legal rights of Consuls in civil cases being subject
to the local laws in the same manner with other foreign
residents owing a temporary allegiance to the State.
The Author has a note on the same point, citing Consul
Auerbach. D says "As to the Rights of Consuls and the
privileges usually accorded to them in the practice of
nations for further Authorities see Twiss; Law of Nations
I. 318: Woolsey; Introd § 95.96. Phillimore; Int Law
Law 240-275. Rayneval; Instr Wolff § 244.249.
Wheaton; Int Law 239-267. Opinions of Attor-
neys General (U S) VII. 22. VIII. 16. Martens; Guide Dipl
ch XII §§ 72.79. Guide des Consuls (de Clercq & de Vallat)
I 6-16. Davis v Packard Peters' Rep VII 276
Valarino v Thompson Selden; Rep (N Y) 576.
The Times gives a short history of the case of M Dillon the
French Consul at San Francisco. "After a long correspon-
dence" he says, "the point was settled by instructions
from the French Government to its Consuls to obey the sub-
poena in future cases. Citing Mr Marcy to Mr Mason
Sept 11 1854 and 14 January 1855 - Note of Mr Mason
and M Walewski Aug 3 and 7 1855 - Annuaire des deux
Mondes 1853-4 p 762. 1854-5 p 732

L has a note to the same word in the list C - note 143 extending from page 423 to page 437 - a true hoard of learning. The citations in D which are underscored are found in L the others are not. L has many citations which are not in D. L gives a very full account of Dillon's case - for the correspondence between Mr Macey & Mr Marcon and between Mr Marcon and [redacted] Mr Wakeworth. L cites Mrs. L Annesley deeds mar 1713-4 f 162 f 45 f 232 Mr Lawson contends that this is a correspondence which he has never seen & remembers in print: but that his attention was directed to it by Mr Macey. It does not say where the correspondence may be found D; but such passage as it is not appended.

The master finds that use of the note of D after the first sentence does infringe the rights of the complainants.

ently. Third

142/p 350 is of a harp and a harp, on the "Northeastern Irishmen"
It is confined to that subject.

L has no note on the same words of the text, but has a
note of three pages to the last words of the same section –
note 106/p 325–

There is very little in common. It is clear that D must
have had recourse to other sources of information than
this note of L.

The master finds no sufficient proof of copying.

only fourth

ci 143 p 352 ci of more than a page on the "Effect of war on treaties".

The undertakes to indicate what treaties are and what treaties are not annulled or suspended by war. He proceeds from Wallace (Internat Law 371, 462) from Kent (Comm I 420) from the opinion of the Supreme Court (in the case of the Society for the propagation of the Gospel v New Haven Wheaton, Rep VIII 464) from Woolsey (Int Law § 152) says the older text-writers made the survival of treaty rights dependent on the origin of the war - citing (Grotius bk 3. ch 20 §§ 27, 28) and Vattel (bk IV ch 4 § 42). Then follows a short commentary. He adds also the debate in the House of Commons on the Declaration of Paris of 1856. Speeches of Sir George Lewis and the Knight of Marnhull 17 1862 and of the Earl of Derby of July 7 1862 Despatch of Mr Marcy to Mr Mason of Dec 8 1858 - Phillimore, Int Law III app 22.

I has a note of some three pages at same place - note 160 p 472 He has some of the citations in D, except those which are underscored. He has a quotation from Mr Marcy's despatch to Mr Mason (in which he refers the reader to Department of State Instructions) this is a manuscript which Mr Lawrence says he never knew Elsewhere in print.

The Speech of Lord Derby, (of which we have a quotation by I) does not bear on any matter set forth in D. Both cite this speech as made July 7th Hansard gives it as made July 6th

I quotes from Sir George Cornwall Lewis p 474 and from Mr Wright. He also quotes from Phillimore citing International Law Vol III p 602.

The high probability is that D took his reference to the Speeches of Earl Derby. Sir George Lewis and Mr Wright from L; note. as also citations of Mr Macey, deputy, and in the opinion of Mr Hall citations of D also infringe the Complainants, rights.

must fight
it 147 p 364. Mr Wheaton says "Accordingly it is not every attack
made on a State that will entitle it to aid under a
defensive alliance; for if that State have given just cause
of war to the invader, the war would not be on its part,
defensive in principle"
Abt this point D has big note of almost a page on "Treaty ob-
ligations to aid in defensive wars"
D criticises the doctrine of the text and also the opinion of
Kent (Comm 1. 50-52 and of Woolsey (Introd § 107)
In the final paragraph he says for the arguments on the
obligation of the United States by the French treaty of 1778, see
Trescot's Life of Jefferson 1. 414. 421, and Hamilton's
Works IV 366. 382. As to defensive wars in their military
as distinguished from their moral character, see Kallenb
Inter Law 329; Kluber Droit des Gens § 236, Phill-
more's Inter Law III § 67. Kent Comm 1. 50 note.
Ortolan Règles Inter II 5. Raymond Droit Nat
Liv III. Ch 2. Bello Derecho Inter. Part II. Ch I § 3
Abt the same place I has a note of some four pages - note 165
p 428. Re specific "moral articles in relation to guaranty
in the treaty of alliance of Feb 6 1778 between the
United States and France, out of which many questions
subsequently arose". States briefly the provisions of other articles

quotes from the opinion of Jefferson in which he maintains that "the two treaties remaining Existing (The United States and France) remaining in Existence, though both have changed their forms of government, the treaties are not annulled by the changes". "If however, this change renders the alliance unequal or disagreeable to the other it may renounce it". citing (Randall, Life of Jefferson 411, 421). In the next paragraph he says Hamilton often opposing that the guarantee applied only to a defensive war, in order to show that it was not the character of the war in which France was engaged, cites from Pinckney "We must say that generally the first who takes up arms, whether justly or unjustly, commences an offensive war. citing "Hamilton, Works vol IV pp 366, 372 Answers to questions propounded by the President April 1793."

I have the correct views and that which accords with our duty to those engaged by Hamilton. The war is defensive on the side of the party which only aims to defend its rights in order to obtain security or reparation." I maintain which I question the correctness of the Whig opinion. The writers are not at all alike. Both have citations in common. Each has many which the other has not.

I does not cite Jefferson or Hamilton for any position which he maintains. but for arguments on the obligations of the treaty of 1778 on the United States.

ancy fight
i 152 fr 372 is of more than a page on Embargo. It is at the end of a section on the right, the subject of which is "Embargo previous to declaration of hostilities". The originality of the second and third paragraphs is not questioned. Much of the phrasing of the first and fourth paragraphs - those in different type and form, is found in; note also a verbal phrase of nearly two pages - Book 169 fr 511.
Speaking of Angaria D fr 373 says "it is a kind of forced loan or presumptive alienation to be justified only by the necessity of war and always accompanied by compensation. It has had the sanction of usage and of good writers - (Martens Comm lib 1 ch 2 §§ 5, 7) (Azuni lib 1 ch 3 art 5) Martens says that indemnity for injuries received, in addition to compensation for use, in nature of damages is not established by usage - (Lib 1 ch 11 Book 2 § 5 No 324) Phillimore (III. 49) thinks the practice to be of modern rather than positive. only by an overruling necessity and that the Court should be accompanied by full indemnity"
I fr 511 has a quotation from Martens in which speaking of Angaria that Author says "I do not believe that any claim can be founded for it in the primitive laws of Nations". Martens Lib II lit 1 ch 2 no 2. § VI Comm 1 fr 230. In Also Phillimore International Law Vol 3 fr 41. I fr 512 quoting from Montesquieu who says concerns the claim of belligerents termed angaria though he admits that there is not Entire Unanimity among authors and

Thus Azuni (droit maritime de l'Europe tom 1 ch 3 art 5 §§ 1, 2 & 29 31 considers it a prerogative of the supreme power which nations enjoying in their own territory.

D cites the case as sanctioning the extraordinary claim and they refer to different parts of his work. The name is true of the citations of Azuni.

Note Cite Phillimore Vol III. D page 42. I page 41. In this D is right.

D p 373 says the treaties between the United States and Prussia of 1785 1799 and 1828 (U S Laws VIII. 92. 170. 344) are with Bremen in 1830 (U S. Laws 470) provide that in case of war between one of the Contracting parties and another nation. the vessels of the other contracting party should not be liable to be detained and arrest for any military expedition or other belligerent purpose. otherwise than upon the most favored nations and that compensation should be made.

I page 512 quotes from the treaty with Prussia of 1785 to the effect that the vessels of neither should be liable to embargo or detention on the part of the other. for any military expedition &c. citing Statutes at Large Vol VIII. 92. but he omits the treaty in this volume as modified by the treaty of 1799 and that the provision more in force is as D gives it. citing (U 170. 344).

The date of the treaty with Bremen is 1828. not 1830 as D'd

In a subsequent note 2 page 770 cites the treaty with Venezuela as of 1836 and to [illegible] cites in page 604 in note as Samtleben There are other treaties containing a provision of the same import as that found in the treaty of 1824 with Prussia and in the treaty with Venezuela of 1836, which are not referred to by 2 or D.

As D seems to examine all the treaties cited by him - it may be that in the matter of the date of the treaty with Venezuela, the mistake was the printer's, in taking 1836 for 1830 in both 2 and D. There are many citations in common. Each has something not in the other. Neither cites apparently Martens and Ortmann. 2 cites Phillimore p 41. D cites Phillimore p 42 and this is right.

When the author the Martens does not find sufficient proofs of [illegible].

Enemy property
note 156 p 347 i of nearly two pages on "Enemy's property found in the Country on the breaking out of War". At the same point the Writer has this note. "The Chief Justice Marshall in Brown vs The United States. Cranch, Rep VIII 123-129."

D in his first and second paragraphs gives the decision of the Court and states the question in whom were divested and vested property from Alien. These two paragraphs are not apposite. In the third paragraph he says Hautefeuille contends that the Laws of Nations of exemption from confiscation previously found within the Country on the breaking out of war in enduring wives and Children after death - citing Wheat IV p 267. Wheat III p 274 and adds it does not follow that the learned Author considers this opinion to be warranted by the decisions of Courts a practice of Nations. He refers rather to treaties recognising the exemption and to the opinions of Writers whom he considers sound & trustworthy.

In the fourth paragraph he says the English Writers but in the American are of opinion that the Laws of Nations is not settled against the right, but indeed admits it - Manning Laws of Nations 167. Phillimore Int Law I 115-135

The fifth paragraph is devoted to the orders and declarations issued and made by the parties to the American war. France and Great Britain - citing French Declaration of March 27 and British declaration of March 29, 1854

The ways "On the part Russia allowed French and English vessels coming to Cronstadt and trade from Ports in the Black Sea to Taganrog, Sea of Azoph, and the vessels from the opening of navigation, to depart in the Winter. At the End of this paragraph are cited. Paris Moniteur March 24 1854. London Gazette 14th April 1854. Gazette du Commerce 19th April 1854. Norath, Laws of Nations 57 Appx 112. Ortolan II 443–444

In this 1st & last paragraph after a short commentary, D quotes from a despatch from Earl Russell of 6th of December 1861 to his Minister Consul at Richmond Va and closes by citing Parliamentary Papers 1862 p 104. The copies this note 157 & 169 infra. I has two notes written on the same page as D's text numbered 172 p 590 & half a page. The other note 173 p 591 On this page of which he quotes an extract from Earl Derby's despatch 2 Dec 6 1861 which Encloses the quotation of D. all which D says of that despatch is found in this note 172. & cites Parliamentary Papers 1862 Correspondence relating to Civil War in the United States p 104. The Heading of D's paragraphs four and five may be found in D's note 173. & at the last two lines of the fourth & last three lines of the fifth and on this note are found all the obscure citations of D which are undiscovered. and many others not in D. There is no "Paris Moniteur". It is the "Moniteur Universel". Both L and Halleck cite it as Paris Moniteur. The Russian paper is called in Norath. "Commercial Gazette"

Both L and D call it Gazette des Communes
D in his third paragraph has two citations of Montfaucon
Tome IV p 267 Tome III p 278. The other two
refers to. In is in Evidence. (Record 214) first Tome IV p 267 of
the four volume edition of the same is Tome III p 274 of the second
Edition. In L the last citation is stated to be from second Edition
The first citation is reprinted 2 from his Edition of 1865: p 371
The last two sentences of D's fourth paragraph are not found L.

The Master finds that the third paragraph infringes the
Complainants Rights and that the others do not.

A

only Gomette
£ 1584 400 s' of nearly two pages - On "Intercourse with the Enemy"

In the first paragraph D says "in the Crimean War, the rule of non-intercourse with the Enemy was usually relaxed on the belligerents; but it was done by orders and proclamations in advance, prospectively relaxing a rule which otherwise the Courts of prize would have been obliged to apply. The order in Council of the 15th April 1854 permitting British subjects to trade freely at Russian ports not blockaded, in neutral vessels and in articles not contraband of war, but not in British vessels (London Gazette April 18 1854). The French orders were to the same effect. The Russian Declaration of 19th April permits French and English goods, the property of French or English Citizens to be imported into Russia in neutral vessels (London Gazette May 2 1854). The French and Russian Governments allowed private communications not contraband in their nature, to be exchanged between their subjects by telegraph. Convention des Etats Unis 23 d July 1855.

L has a note at same place of four pages - note 175 p 451

All the learning in this paragraph is in L; note 175. and so are all the citations, in the same order and style or manner. 4 pages ~~in three~~. L citing (Conv Gazette of the 7th (19) of April 1854 copied in London Gazette of the 2d of May) and Convention des Etats Unis 23 Juillet 1855. D might have gone to the sources, as directed by L.

The first paragraph only is appealed.

only English
Ch 168 p 431 of Eighteen lines. D says in many treaties and decrees fishermen
Catching fish as an article of food are added to the class of persons
whose occupation is not to be disturbed of war. He then specifies
persons who not in actual military service are liable to be treated
as Combatants - citing Halleck International Law 427. 4 & 8. He then
speaks from instructions to the Armies of the United States & who
are liable to be treated as prisoners of war.
L has a note of Eight lines on same page - note 147 p 596 in
which he says "Emerigon Ch 12 Sect 19 & 8 refers to ordinances of
France and Holland in favor of protection of fishermen during
war. Due to the wish Effect was the order of the British Government in 1810
for abstaining from hostilities against the inhabitants of the
Faroe Islands and Iceland. So fishermen were included in the
treaty between the United States and Prussia in 1785 as one
of the classes of non combatants whom the parties stipula-
ted to protect - He cites several authorities - none of which are in
D. who cites only one. viz Halleck 427. 42 V.
L says "fishermen" D says "fishermen catching fish as an article
of food". D "in many treaties - L mentions one.

twenty-ninth

Ch 174 & 454 is of six lines. Re Treaty of recapture from pirates. The says,
"Kaperfreiheit Vertrag des Nord-Deutschen Bundes vom 1 V & 427. Acts 13 & 14 Victoria
ch 26, 27 and 17 & 18 Victoria ch 19 & 78: and 27 & 28 Victoria § 40."
In the United States, recaptures from pirates are restored to the
owners, subject to salvage; but the amount of salvage in such
cases is not regulated by a fixed rule, but left to the discretion
of the Court, upon the circumstances of each case, unless under
treaty stipulations (U S Laws XII 314) As to recapture in war
see note 175 infra on recaptures.

L has a note of nearly half a page on the same plan. Note 193 p 649
D cites 27 & 28 Victoria - not in L. and U S Laws not in L.
L has various citations not in D. The statement of D that in the
United States recaptures from pirates are restored to the owners
and that amount of salvage is left to the discretion of the court,
is not in L.

L cites Kaperfreiheit Vertrag vom 1 V p 427. So reproduces this.
This is right if a reference to the four volume Edition is intended
but if the same Edition of three volumes is meant, it is wrong.
The notes have very little in common.
D cites 27 & 28 Victoria and U S Laws which are not referred to by L.

Privateers
Ch 1764 L 467 is of half a page. L's note at same place is of four lines - Note 944 L 658
The two notes have but little in common.
S says "The British Parliament passes prize Act annually to meet
East where War. A royal proclamation declares the royal
intention of the royal bounty to grant to Captors certain sums on
the whole, as may be of prizes captured in the existing war and
regulates the distribution of prize money among captors. The Act of
Parliament is passed at the same time, referring to the procla-
mation and establishing officially independently the same, rights
in Captors and rules for distribution" and the attempt an explanation
of this two-fold action: says that Statute of 27 & 28 Victoria
provides that the property of a British subject recaptured from a
public enemy shall be restored on payment of one Eighth of the
value. and points out where that Statute and the Statute of the
United States now in force, differ.
L. Entire note is "In England a prize Act is passed at the beginning
of every war. The Prize Act 17 Vic 18 (1854 for the Russian war, was
similar in its terms to the one referred to in the text; omitting
however all reference to privateers which were not allowed to be
employed during the Russian war. Tedor; Leading cases on
Mercantile Law p 818. Phillimore International Law vol III
p 518. D cites 27 & 28 Victoria - and nothing else.
Note says a new prize Act is passed for every war.
Not a word true is in common.

Unity first
title 1741470 is of twelve lines. He gives the present position of the French law as to recapture from an Enemy and to Salvage as derived from the Ordinance of 1681 and that of June 1744 and the Arrêté du 2 Prairial An 11. At the End he cites Manuel pratique des Nat Maritime Lit 13. ch 3 Tome 811 p 340. Pistoye et Duverdy des Prises Lit 7 Tome 11 p. 104. 109. Hallecke. Inter Law 481. Phillimore Inter Law §§ 413. 414.

L has a note of eleven lines, not at same place - note 187 p 660 It is Lit a word in the same relation as D;.

L says "The Arrêté of 2 Prairial, year [illegible] which now regulates the matter must not preclude the right of these regulations in what concerns recapture by vessels of war - He states the rules of restoration and Salvage, substantially as D does. He cites, at the End of his note, Manuel pratique droit des Nations Neutres Tome 111 p 340 2me Edition - de Pistoye et Duverdy. Traité des prises Tome 111 p p 104. 109.

It is observable that while D states of the present position of the French Law as derived from the two ordinances and the Arrêté of 2 Prairial - L would seem to regard it as derived from the Arrêté alone. D cites Hallecke and Phillimore - L cites neither. And they do not cite alike in the words in common. Hallecke 481 gives the present position of the French Law as do L and D - D might have taken it from L or D and L from Hallecke

right to search
2 204 p 519 of Woolsey's. D says "On this point in the diplomatic
history of the United States, and on the principle of such
qualified and limited advantages given of a neutral to one
belligerent of force of a treaty made when the belligerent na-
tions were at peace see Kent Comm 1. 116. Phillimore's.
International Law III § 134-144. Ortolan § § 144-6. Wallace 514-516
Manning 167. Ortolan diplomatie de la Mer Livre 2 ch 4.
Martenfeuilles tit 4 ch 1. Jefferson's Dept State 138. 200. 215.
C F Adams Life of John Adams x 254. Gibbs' Administra-
tions of Washington & Adams 1. 440. Pitkin's History of the
cross United States Vol 1 Ch 10 Woolsey, International § 155
I has a note of many two pages at same place - note 213 p 212
which refers the reader to his note 165 p 492. In this note he cites
Jefferson's Dept History of the United States diplomatic administration of
Washington and Adams p 134. Gibbs' Memoirs of the administration
of Washington and Adams vol 1 p 440. C F Adams' Works of John
Adams vol X p 254.
In his last paragraph but D says the troublesome provisions in the treaty
between France and the United States of 6th February 1778 were
annulled by the Convention of 30th September 1800, which gave
no special privileges during the war -
I says in substance the same p 492.
It is clear that D could not have found all his citations in Woolsey
Kent's & Phillimore's as not in I.

inity Thirds
ii 205/p 520

of a friendly thing. The Wheaton says the granting of a passage to one belligerent is no cause of complaint on the part of the other provided the same privilege is granted to him unless there be sufficient reason for withholding it". At this point in the text is D; note 208. He dissents from the Austin. "Modern writers", he says except some of the German school, & press strongly the opinion that for a neutral to permit an army of a belligerent to pass over his territory for a purpose of war, would be to an abandonment of neutrality. (A special licence in a particular case to one belligerent would not be justified by an offer to grant a similar licence in a like case to the other; for the frequency, the means of giving the licence and the advantages to be gained by it are too unequal to ensure equality and it can hardly be supposed that a neutral will grant a general licence of passage to both parties at their option.) He cites Phillimore. Halleck Kent, Manning, Wildman, Ruffin & Martenville - summaries of the treaties for passage of troops are given in Mannings Law of Nations 142-6 and Phillimore's Intern Law III §§ 152-4.

I has a short note on same pleas - note 214 to 214. He says Grotius maintains that Neutral Nations ought to offer a free passage to an Army seeking to recover its rights in a just cause - citing Heron Thirty of persuasion p 399. I says so far is it from being allowable to Neutrality voluntarily to grant the passage to one of the belligerents. That the granting of it may be the motive for an

immediate declaration of Man, on the part of the Intelligent universal Monarch - for which he cites Montesquieu Livre 1 p. 250 2me Edit.
The remainder of his note is upon the right of a Intelligent to keep over the Lunatick man of a Merchant - which D does not touch.
L & D is deffering from the Author on argument
The part of D's note inclosed in brackets, is not when found in L -
And why one of D's alterations is in L -

sixty fourth
v 213 p 532

The Author has a note in which he cites certain authority in support of the opinion advanced in his text. D in this note of fourteen lines, cites four additional authorities and also the opinion of Attorney General Cushing Apl 26th 1855 in the case of the British Ship Gilda. Referring to opinions of Attorneys General v 11, 123. He says "the opinion presents all the learning on the subject, and the conclusion may reached on which the President acted. That in the absence of any prohibition a belligerent Ship of war of a friendly nation, might visit our ports with her prizes and remain there a reasonable time for ordinary purposes of temporary repairs and supplies and that a foreign sovereign could not be subject to obey a writ of habeas corpus issued by a local tribunal to inquire into the lawfulness of the custody of the prisoners of war on board." In his second paragraph he says ("The assertion to recognize privateering in war has led to rules less favorable to privateers") Martenfriede tom 1 p 340. He adds in the late American war, though the United States employed no privateers, the French Maritime powers ~~from to employ them~~ prohibited them to equip their ports except as a refuge from perils of weather. He has a note at same place - note 219 p 726 - He cites authority which D has in his first paragraph except the opinion of the Attorney General, from which he quotes a brief

Extract and then gives a summary of the opinions. D might have gotten what he says from the Extract and Summary - but he could not have learned from it that the President acted upon it nor could he have safely said that the opinion contains all the learning on the subject. D cites Wallace p 522 3 and then Wallace cites the opinion to the main proposition in D. L in his first paragraph says a distinction is made in many Cases as to expenses in case of hirelings They advert them only to refuse in the Case of Cumpost, want of provisions or hostile pursuit. Vanheythuysen Com 1 p 340 2 Edn This has been the rule unanimously adopted during the present hostilities in America. But no where in L is found a warrant for that part of D, not included in Wallace

ante Light
to 218 p 550 a Note of five lines at the same place where the Author has several citations in support of the view taken by him in the Text. D says "See also Ortolan Dipl de la Mer Liv II ch 10. Tom I p 21. Woolsey; Introd § 64. Heffter Europ Volkr § 79. Manifestoes contends for the same Exemption in private Ships of Commerce as in public Ships of War, as far as territoriality is the basis of Exemption. Droit des Nat Neutr tom VI ch I § I See also note 67 ante on infringement of Canon.

L has a note of fourteen lines not at same place but to a previous section of same subject. Note 222 p 736. He says the views taken in the Text is thus combatted by Manifestoes. Then follows an Extract in which Manifestoes says I cannot agree with Ortolan Diplomatie de la Mer Liv II ch 10 Tom I p 211. for this Extract he cites Droit des Nations Neutres tit VI ch I § I. Tom I p 290 2nd Edit.

There are two citations in D which are not in L The substance of the note might have been omitted from L

Quincy Wright
The 226/629

is of some five pages on "Contraband of War"

L has a note of about six pages - note 229 p 796. at same place

Page 630, D cites Reddie on Maritt Inter Law II 456 -

Page 797, L has a half dozen lines in quotation marks, for which he cites Reddie Researches Historical and Critical in Maritime International Law. But there is nothing between the quotation marks which would warrant D's citing Reddie where he does - he must have seen more of that author than he finds in L.

Page 630, D says "The treaty of 1794 with Great Britain recognizes that articles exclusively useful may be contraband of war by the then existing law of nations. But our other treaties usually exclude naval stores exclusively useful from the list of contraband, although some of the treaties include salt petre and gunpowder. L says, page 798. "The numerous treaties to which the United States have been parties, which contain stipulations respecting contraband, with the single exception of that of 1794 with England confine it to arms and munitions of war and the early ones exclude naval stores in express terms from the list. See Malloy at large vol VIII passim See also vols IX. X. XI etc. It is clear that D did not consult this part of L's note from this part of L's note.

D page 631 says "Of the Continental writers Martens alone contends for the absolute rule limiting contraband to such articles as are in their nature of first necessity for war substantially exclusively military in their use and to make up as to the character of

direct and immediate use in war. Citing Tit-882. Tom II pp 84.101.154 412 Tom III p 222.

L page 398 gives Martefeuille, Vimes and adds Bonfils Gen Rentiers Tom II p 412. Tom II pp 84, 101, 154 2nd Ed Ib Tom III p 222.

D might have written his sentence from reading what L had said viz Martefeuille; Vimes.

D says (page 631) Ortolan is of the same opinion on munitions and contends that all modern treaties limit contraband to articles directly and solely applicable to war; yet he admits that certain articles not actually munitions of war, but whose employment is chiefly in war may under circumstances be contraband - as shipping naval stores machinery &c: but Coal he contends from its general necessity is always free. Citing Tom II ch 6 pp 179-206.

L page 396 presents the views of Ortolan and cites from him Diplomatie de la Mer Liv III Ch 6. Tom II p p 179-206 2nd Ed.

This part of D; might have been taken from L.

In regard to paragraphs - in regard to the Eighth Article and the last sixteen lines of the last paragraph, might have taken from L

D in his last paragraph cites Moseley Contraband of war in his own treatise. L page 401 cites Moseley and states his opinion on a point which D does not cite him for, referring the reader to p 1

D refers to p p 9.110.

Thirty-seventh

n° 228 p 637 is of twenty four pages. Five paragraphs (p 639) only are examined.

First D says p 639 "At the beginning of the Crimean war, the declaration of Great Britain of 28 March 1854 (and that of France was to the same Effect) was in these words "It is impossible to forego the Exercise of her right of seizing articles Contraband of War, and of preventing Neutrals from bearing the Enemy's dispatches."

I has a note at the same word of the text, note 230 p 805.

He says p 771 "The preventing of Neutrals bearing Enemy's dispatches was coincident with the seizing of articles of contraband, as an Exception to the otherwise unrestricted freedom of Commerce, conceded to them by the declarations of England and France and by the Order in Council of the 15th of April 1854"

The Language of the declaration is not there given, but in the note of I 228 p 771 he says the Ministers of England and France communicated to the Secretary of State of the United States on the 21st of April, the declaration made on the 28 March.

The three quotes from the declaration + and a part of I's quotation is the quotation of D.

Second D says (p 639) At the beginning of the Civil war in the United States, the Royal proclamation of Neutrality of 13th May 1861 warns British subjects "against carrying officers

soldiers dispatches arms <u>military</u> stores .... for the use of either of the Contending parties as acts in derogation of their duty as subjects of a Neutral Sovereign".

L says (p 705) The Queen of England's declaration of Neutrality in the present war between the United States and the Confederate States, includes in the same category with articles of contraband, carrying of officers soldiers dispatches &c for the use or service of either of the Contending parties. The words in D underscored - viz "arms and Military Stores" - are not found in L, nor in the date of the declaration. But on page 696 of L the date is given and words underscored are found

Third D (p 639) says "The decree of the Emperor of the French may more general": and gives a quotation from it.

L (p 699.) says "The French decree, as published in the Moniteur June 1861 was as follows - The following are the parts of which the quotation of D is a part.

Fourth D (p 639) says "The Spanish decree of June 17th 1861 says "the transportation of Munitions of War is forbidden as well as the carrying of papers or communications for the belligerents" L (p 699) gives the same date and the same quotation and more.

Fifth D (p 699) says The Declaration of Paris is silent on this subject. The proposed international code of Spanish America of 1862

in connection with its recognition of the Declaration of Paris and this provision; "Besides the articles qualified as such are to be deemed contraband and of war commissions of every description should the belligerents and the circumstances of which they are the bearers".

2 (p 9 51) The question raised by the affair of the Trent does not relate in any manner with the declaration of the Congress of Paris - - - - The proposed international Code of Spanish America, while recognizing the principles of the Declaration of Paris contains a provision that - Therefore comes in determining the question of D. 2 cites, La Cronica 6 de Octubre 1862.

D does not indicate what any of these explanations from which the quotes are to be formed.

The Master finds that the fourth, Eighth Ninth and tenth paragraphs do infringe the rights of the Complainant

Ortolan 2 30 p 663 is of three pages on "Penalty for carrying Contraband".
D says "It would seem that American Vessels carrying
Contraband were in early times liable as wrong-doers
and deemed subject to forfeiture. He cites several authorities.
"This consequence", he says (page 663) to the owner of the Vessel
and Cargo may be prohibited in the treaty between the United
States and France of 1800 Art 13 more frequently.
He has a note not at the same place - Note 2 31 p 807 - in
which he says (p 809) "Thus was in the treaty of 1800 between
France and the United States, which was limited to a term
which long since expired, but to which in this connection
Ortolan refers, a provision in the article confining contraband
to articles connected with war, that the vessel in which they
are laden and the residue of the Cargo shall be considered free
and not in any manner infected by the prohibited goods,
which belong to the same or a different owner. It is enough
that D got his knowledge of the treaty of 1800 from this section in
2. But the number of the article of the treaty is not found in L.
After reviewing the former practice of Nations and after commenting
on the case of the Commercen Wheaton's Rep 1. 382 D says
On the penalty for Contraband and its reasons, see further
Hautefeuille Des Droits Neutres (3me) IV pp 224-234.
Ortolan Regle Internat tome II Liv III p 147.

I says (p 203) The confiscation of any thing beyond the actual contraband is opposite as well by Ortolan as by Hautefeuille. Though they differ as to the principles on which this opinion are based - The text gives a long quotation from one citing Ortolan Diplomatie de la Mer tom II liv III ch 6 p 167 2nd Ed - and then a long quotation from the other citing Hautefeuille Droits des Nations Neutres tom III pp 224-234 tit XIII ch I

Nevertheless I says appears in 4 to maintain the relations of Ortolan and Hautefeuille q.D -

Treaty Exposition
[illegible]233/p 674 is of two pages on "Effective blockade"

D says: "During the Crimean War, the English and French declarations of 1854 assume "an Effective blockade, which may be established with an adequate force". The declaration of Paris of 1856 requires that a blockade to be [illegible] on neutrals, shall be "Effective - that is to say maintained by a force sufficient really to prevent access to the coast of the Enemy". "This definition", he says "is unscientific and, in its literal sense, requires an impossibility. He then makes quotations from the speeches of Earl Russell 9th March 1857 - Earl Granville in the debate of May 16 1861 - Lord Brougham - Earl Russell; instructions to Lord Lyons July 15. 1862; refers to letter of Earl Russell to Mr Pearson July 17 1863, when his Lordship explains the language of the Declaration of Paris as not intended to require that ingress and egress should be made impossible, but as aimed at paper blockades. He quotes from de Rouchi's [illegible] citing Moniteur Universel September 1861 from the Instructions note to Mr Buchanan July 1st 1846 He adds, "During the Civil war the United States Government recognized fully the obligation to maintain its blockade actual and effective and in its diplomatic correspondence and judicial decisions, the definitions of an Effective blockade were strictly in accordance and substantially to the effect that the force must be sufficient to make ingress or egress of an enemy's ports manifestly dangerous; and the actual Effectiveness of the blockade, whenever a case

crew of a hostile capture a warrant of any more distinguished of the
Neutral powers" citing Lord Lyons to Lord Russell May 2 1861
Same to same May 4 1861. Earl Russell; Speech withdrawn of Lords
March 10th 1862. Sir R Palmer; Speech March 7 1862. Earl Rus-
sell to Lord Lyons 15th February 1862. Earl Russell to Mr Mason July 10
1863. In all this, the manifest object and purpose of D is to sup-
port his criticism on the Declaration of Paris Paris.
At the same place D has a note of his pages. note 235 & 237. and
a note of a page and a half. pp 45. 46 and 47 of his supplement.
In these notes are found all the opinions citations & pages to
which reference and all the opinions quotations & pages from Lord Rus-
sell's letter to Lord Lyons of February 15th 1862 and the last words are
though something like the last is, found in L.
D's fifth paragraph is on Neutral Rights of War. He says "Neutral
Rights of War have no privileges against blockade and the part-
-ies they cannot be resisted giving the belligerent power the more
rights to require them to keep clear of the lines of blockade. citing
Mr Webster to Mr Mackenzie July 1 1840. Ortolan II p 334
Hautefeuille Tom II p 219. He says during the Mexican blockade
of Texas special orders were given, prohibiting the Entrance of Neu-
-tral Ships of War; but it was allowed of special orders in the Civil
War in the United States citing "Lord Lyons to Mr Seward Nassau
May 11 1861." And the United States permitted Neutral

vessels of war to carry through the blockades. the official des-
patches not only of their own Government but of other friendly
Governments, citing (Correspondence between Lord Lyons and the Secre-
tary of State 12 and 14th 1861. Diplc Corr 164, 173)
In page 424 quoting from the Instruction to Mr Buchanan of July 1st 1846
which quotation contains D; statement that neutral vessels of
war can have no privilege against blockades. D cites Ortolan tom II
p 334, but to another & different matter. D cites for another por-
tion Hautefeuille tom II p 264. D says nothing of various or-
ders given, during the American blockade prohibiting the entrance of neutral
ships of war. but he does say that during the pending civil war
in the United States, although vessels of United States have the
privilege to enter and depart from the blockaded ports. for
this he cites Lord Lyons to Admiral Dahlgren May 11th 1861. He does
not allude to the permission given to neutral vessels of war to carry
through the blockade official despatches nor does he refer to the
correspondence between Lord Lyons & Mr Seward.
In the sixth paragraph D states a position taken by Hautefeuille and
by Ortolan - citing tom III p 120 of Hautefeuille and tom II p 311
of Ortolan. D in note 236. p 431 cites the same as opposed
to a principle announced by Sir William Scott. D cites and criti-
cises them. Note quote from the letter of Lord Russell to Mr Mar-
tens of February 10 1863.

It is evident on a careful reading of L; there notes and of D; note that the greater part of D; material and all but four or five of his citations are found in L. but it is no clear that D must have had beyond L; notes.

The plan and structure of the two are manifestly different. And there is evidence of thought and study on the part of both.

Hershey wrote
ante 237 p. 646

v of Eighth Ames. He says Hamilton on the Theory of the Orders
pinnaction displacement and augmentation of the blockading force,
wounded himself the right of capture to the extent of sea and harbor
actually held by that force. (Com II p. p. 239. 244) He says the
position of Hamilton is without support in the form of judicial de-
cisions, treaties, the opinions of Commentators of received au-
thority, or diplomatic positions taken by ~~Commentators~~ Nations.
(See ante note 237 p. 645). The right of capture on the return
voyage was maintained by the United States Courts in the Civil
War. citing The Mercury, Major Bradbourne, and J N Fowler
Both justices in New York. See Hyltons on Prize Law 290, 291.
2 is a short note at the end of the right section of the Eighth Ames gives the
position of Hamilton as to time and when only the
guilty vessel may be visited. says "H admits the Attorney
Report Lee Sherrill, Wheaton and Phillimore do not seem with him
objects entirely to the right of considering as guilty of a viola-
tion of blockade Every Junction vessel which has sailed for
a place declared under blockade, after knowledge of the No-
tification and of regarding its pleasant destination, during
the whole return voyage to its place of destination. Every
vessel which has left a blockaded port."
2 has no other citations than Hamilton Com II p 239
and pp 244.

1.

Sortes

on 240 f 688 is of two pages. D gives a history of the case of the Cagliari the opinions in brief of Dr Twiss and Dr Phillimore and finally his own opinion and the reasons thereof at some length. At the end of his work he cites, Martens Causes Celebres V 600.

Martens gives a history of the case but does not allude to Dr Twiss or Dr Phillimore. D had Abridg. Ed. in which the history of the case is given, and a short extract from Dr Twiss' opinion in the case - but it is of no authority for the opinion as reported by D. The history of the case as given by D is not found in L.

L f f 267 and 268 gives the opinions of Twiss & Phillimore and in his index under the words Cagliari, refers the reader to f 267. No writer of this epoch has given these opinions in any other book and no one intimates where else they are to be seen. It is not examinable that D has taken from L anything but the two sentences on page 688, in which appear these opinions.

The matter justly that D was indebted to L for his reports of the opinions of Dr Twiss and Dr Phillimore, and has, to that extent, misquoted the Complainants report

Judge Story
note 245 p 708

is of a page and a half on "Neutrals under Enemy's Convoy"
I has a note on the same plan of nine pages - note 245 p 467
D (p 709) says "Judge Story in the Neriede says in the course of his examining: "My judgment is that the act of sailing under the belligerent convoy is a violation of neutrality; and the Ship and Cargo is carried in delicto are justly confiscable; and further if resistance by Company, as in my opinion it is not, to prevent the offence, that the resistance of the Convoy is to all purposes, the resistance of the appropriation."
I gives the quotation from Judge Story's opinion in the same words leaving out the articles underscored.
Judge Story ~~in the~~ in 9 Cranch 445 is reported as saying My judgment is that the act of sailing under belligerent or neutral Convoy is effectually a violation of neutrality and the Ship and Cargo is carried in delicto are justly confiscable; and further, that if resistance by Company as in my opinion it is not, to prevent the offence, that that that the resistance of the Convoy is, to all purposes the resistance of the appropriated fleet.
There are several variations common to both.

The Master has indicated such parts of the Respondents, works in the fourth class as he finds to infringe the rights of the Complainants - and as to other parts of said works he finds they do not infringe, either because he is satisfied they do not, or is not satisfied that they do.

He has endeavored to present the facts - the questions raised and the proofs and suggestions relied on by the respective parties, as briefly, as is consistent with the discharge of his duty to the Court -

All Respectfully submitted
Jo W Bairnes